

April 3, 2022

The Honorable Lewis J. Liman
U.S. District Court for the Southern District of New York

Dear Judge Liman:

I am a 3L at the University of Chicago and am applying for a clerkship beginning in August 2024, or thereafter. Before then, I will have worked at Paul, Weiss. My experiences there as a summer associate—particularly on pro bono appellate and criminal defense cases—have only strengthened my interest in clerking.

Before law school, I lived abroad as a Fulbright Scholar and Master's student in Northern Ireland, and later as an English Teacher in Shanghai, China. I am grateful for these experiences and to have entered law school with a deepened sense of perspective, curiosity, and connection with people from different backgrounds than my own. I knew I wanted to pursue public service in some capacity. During my internship at the U.S. Attorney's Office for the Southern District of New York, I was inspired by the collegial environment and commitment to "do the right thing, in the right way, for the right reasons."

I have tried to emulate these values, be receptive to feedback, and grow as a writer, researcher, and future lawyer while a student, research assistant, *Law Review* Comments Editor, and Civil Rights Practicum member. I received the law school's Thomas R. Mulroy Prize for Excellence in Appellate Advocacy in 2021, and an Honorable Mention for Excellence in Appellate Advocacy in 2020. I have thoroughly enjoyed my time at law school and have tried to give back to the community at every turn. I have, for example, managed schoolwide projects and worked with administrators as a Law Students Association representative and the treasurer of First Generation Professionals—two positions I was elected to by my peers.

As a clerk, I know I would gain a valuable mentor and continue to grow as a lawyer. I would strive to be a thorough researcher, clear writer, efficient worker, and—above all—a team player. I would respectfully engage with others to consider all sides of an issue. And ultimately, I would be driven by a sense of responsibility to the public when approaching each of my tasks.

My resume, transcripts, and writing sample are enclosed. Letters of recommendation from Professors Aziz Huq, Genevieve Lakier, and Lior Strahilevitz will arrive separately. I also took a class with former U.S. Attorney Pat Fitzgerald and Seventh Circuit Judge Michael Scudder, in which I wrote a judicial opinion, and they are references. You can reach Pat at (312) 758-4454 or patrick.fitzgerald@skadden.com, and Judge Scudder at (312) 435-5806 or michael_scudder@ca7.uscourts.gov. Should you require additional information, please do not hesitate to let me know. Thank you.

Sincerely,

Marissa Piccolo

Marissa Piccolo

1010 E. Hyde Park Blvd., Apt. 1, Chicago, IL 60615 • (203) 913-6030 • marissapiccolo@uchicago.edu

EDUCATION

The University of Chicago Law School, J.D., Chicago, IL, expected June 2022

- *Honors*: Thomas R. Mulroy Prize for Excellence in Appellate Advocacy (2021); Honorable Mention for Excellence in Appellate Advocacy (2020)
- *Journal*: *The University of Chicago Law Review*, Comments Editor
- *Activities*: Hinton Moot Court; Law Students Association, Representative; Spring Break of Service, Participant; First Generation Professionals, Treasurer

Queen's University Belfast, M.A. in Global Security and Borders, First Class with Distinction, Belfast, UK, June 2018

- *Honors*: Fulbright Scholarship
- *Activities*: EU-NATO Seminar, Women and Leadership International Conference Planning Group, Qualification in Coding, International Student Ambassador
- *Dissertation*: *UNSCR 1325 and Promoting Women's Political Participation Post-Conflict*, Received funding to conduct interviews in Bosnia-Herzegovina, analyzed implementation of the UN resolution, and shared findings.

University of Connecticut, B.A. in Political Science and Economics, *summa cum laude*, Storrs, CT, May 2017

- *Honors*: University Scholar (highest honor for 25 students), Honors Scholar, Phi Beta Kappa, Academic Excellence Scholarship, Truman Scholar Nominee
- *Activities*: Mount Vernon Leadership Fellow, Leadership Legacy Experience Student-Leader, *The Daily Campus* Editor, U.S. House of Representatives Intern, President of College Democrats, independent research grants
- *Study Abroad*: UConn in London (Fall 2015), Hopscotch Asian Women's Centre Intern
- *Thesis*: *Running Comes Before Winning: Explaining the Gender Differential in State Legislatures*, Created a SPSS dataset to investigate likelihoods of female candidacies and elections, presented findings, and published online.

EXPERIENCE

Paul, Weiss, Rifkind, Wharton & Garrison, Summer Associate, Remote (New York), June – August 2021

- Worked on a variety of litigation matters, including pro bono appellate and criminal defense cases.

Muslim Advocates, UChicago Law Civil Rights Practicum Member, Remote, January – May 2021

- Wrote research memos for a consumer-protection lawsuit against Facebook, regarding the site's hate speech policies.

U.S. Attorney's Office for the Southern District of New York, Criminal Division Intern, Remote, June – August 2020

- Assisted investigations, completed research, attended hearings, and drafted three motions. Subject matter ranged from human trafficking and transnational money laundering to criminal procedure.

Professor Genevieve Lakier, Research Assistant, Remote, June 2020

- Researched First Amendment protections during the George Floyd protests. Completed interviews, surveyed academic literature, and identified emerging legal challenges.

Wonderful International English, English Teacher, Shanghai, China, August 2018 – June 2019

- Taught English classes, focusing on students' verbal communication skills, mentored all ages, led creative learning activities, and managed classrooms.

Executive Office of Northern Ireland, Independent Researcher, Belfast, UK, February – May 2018

- Completed an evaluation of the government's peace-building program, producing a strategic document utilized by their Good Relations Directorate. Conducted cross-country interviews and analyzed policy to highlight best practices and advise on Brexit.

Connecticut Office of the Attorney General, Legal Intern, Hartford, CT, June – August 2016

- Initiated cases using the state e-filing system, tracked updates, drafted correspondence, and assisted attorneys in court.

INTERESTS: soccer, pickleball, painting, traveling, podcasts.

OFFICIAL ACADEMIC DOCUMENT



Key to Transcripts of Academic Records

1. Accreditation: The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit <http://csl.uchicago.edu/policies/disclosures>.

2. Calendar & Status: The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

3. Course Information: Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

4. Credits: The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

5. Grading Systems:

Quality Grades

Grade	College & Graduate	Business	Law
A+	4.0	4.33	
A	4.0	4.0	186-180
A-	3.7	3.67	
B+	3.3	3.33	
B	3.0	3.0	179-174
B-	2.7	2.67	
C+	2.3	2.33	
C	2.0	2.0	173-168
C-	1.7	1.67	
D+	1.3	1.33	
D	1	1	167-160
F	0	0	159-155

Non-Quality Grades

- I **Incomplete:** Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).
- IP **Pass (non-Law):** Mark of I changed to P (Pass). See 8 for Law IP notation.
- NGR **No Grade Reported:** No final grade submitted
- P **Pass:** Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
- Q **Query:** No final grade submitted (College only)
- R **Registered:** Registered to audit the course
- S **Satisfactory**
- U **Unsatisfactory**
- UW **Unofficial Withdrawal**
- W **Withdrawal:** Does not affect GPA calculation
- WP **Withdrawal Passing:** Does not affect GPA calculation
- WF **Withdrawal Failing:** Does not affect GPA calculation
- Blank:** If no grade is reported after a course, none was available at the time the transcript was prepared.

Examination Grades

- H Honors Quality
- P* High Pass
- P Pass

Grade Point Average: Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

6. Academic Status and Program of Study: The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

7. Doctoral Residence Status: Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a

University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

Scholastic Residence: the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

Research Residence: the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)

Advanced Residence: the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

Active File Status: a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

Doctoral Leave of Absence: the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

Extended Residence: the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled *Pro Forma* does not extend the maximum year limit on registration.

8. Law School Transcript Key: The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

9. FERPA Re-Disclosure Notice: In accordance with U.S.C. 438(6)(4)(8)(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar
University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

Revised 09/2016



Name: Marissa Ashlyn Piccolo
Student ID: 12175368

University of Chicago Law School

Academic Program History

Program: Law School
Start Quarter: Autumn 2019
Current Status: Active in Program
J.D. in Law

External Education

University of Connecticut
Storrs, Connecticut
BA 2017

Queen's University of Belfast
Belfast, Northern Ireland, United Kingdom
Master of Arts 2018

EP or EF (Emergency Pass/Emergency Fail) grades are awarded in response to a global health emergency beginning in March of 2020 that resulted in school-wide changes to instruction and/or academic policies.

Beginning of Law School Record

Autumn 2019			Attempted	Earned	Grade
Course	Description				
LAWS 30101	Elements of the Law William Baude		3	3	179
LAWS 30211	Civil Procedure I Emily Buss		3	3	177
LAWS 30311	Criminal Law Genevieve Lakier		3	3	180
LAWS 30611	Torts Saul Levmore		3	3	174
LAWS 30711	Legal Research and Writing Patrick Barry Ryan Sakoda		1	1	178

Winter 2020

Course	Description	Attempted	Earned	Grade
LAWS 30311	Criminal Law Richard McAdams	3	3	180
LAWS 30411	Property Lior Strahilevitz	3	3	EP
LAWS 30511	Contracts Omri Ben-Shahar	3	3	EP
LAWS 30611	Torts Saul Levmore	3	3	174
LAWS 30711	Legal Research and Writing Patrick Barry Ryan Sakoda	1	1	178

Spring 2020

Course	Description	Attempted	Earned	Grade
LAWS 30221	Civil Procedure II William Hubbard	3	3	EP
LAWS 30411	Property Lior Strahilevitz	3	3	EP
LAWS 30511	Contracts Douglas Baird	3	3	EP
LAWS 30712	Lawyering: Brief Writing, Oral Advocacy and Transactional Skills Ryan Sakoda	2	2	EP
LAWS 47301	Criminal Procedure II: From Bail to Jail Alison Siegler	3	3	EP

Summer 2020

Honors/Awards
The University of Chicago Law Review, Staff Member 2020-21

Autumn 2020

Course	Description	Attempted	Earned	Grade
LAWS 40201	Constitutional Law II: Freedom of Speech Genevieve Lakier	3	3	179
LAWS 42801	Antitrust Law Randal Picker	3	3	178
LAWS 53218	Law and Public Policy: Case Studies in Problem Solving Stephen Patton	2	2	180
LAWS 53428	Philos. of Natural Law and Natural Right F. Russell Hittinger	2	2	179
LAWS 94110	The University of Chicago Law Review Anthony Casey	1	1	P
LAWS 95030	Moot Court Boot Camp Rebecca Horwitz Madeline Lansky	2	2	P



Name: Marissa Ashlyn Piccolo
Student ID: 12175368

University of Chicago Law School

Winter 2021

Course	Description	Attempted	Earned	Grade
LAWS 40301	Constitutional Law III: Equal Protection and Substantive Due Process David A Strauss	3	3	178
LAWS 46101	Administrative Law Jennifer Nou	3	3	181
LAWS 53221	Current Issues in Criminal and National Security Law Michael Scudder Patrick Fitzgerald	3	3	185
LAWS 53388	Civil Rights Practicum Aziz Huq	1	1	184
LAWS 94110	The University of Chicago Law Review Anthony Casey	1	1	P

Spring 2021

Course	Description	Attempted	Earned	Grade
LAWS 41101	Federal Courts Alison LaCroix	3	3	179
LAWS 43253	Financial Regulation Law Eric Posner	3	3	178
LAWS 53108	Case Studies in Professional Responsibility Amelia Runyan	3	3	180
LAWS 53388	Civil Rights Practicum Aziz Huq	1	1	184
LAWS 94110	The University of Chicago Law Review Req Meets Substantial Research Paper Requirement Designation: Anthony Casey	1	1	P

Summer 2021

Honors/Awards
The University of Chicago Law Review, Comments Editor 2021-22

Autumn 2021

Course	Description	Attempted	Earned	Grade
LAWS 42301	Business Organizations Anthony Casey	3	3	182
LAWS 47201	Criminal Procedure I: Investigations Trevor Gardner	3	3	178
LAWS 53431	Constitutions Lab: Myanmar Thomas Ginsburg Jason Gelbort	3	3	182
LAWS 57506	Psychological Dimensions of Criminal Law Avani Sood	1	0	

Honors/Awards
The Thomas R. Mulroy Prize, for excellence in appellate advocacy and oral argument in the Hinton Moot Court Competition

End of University of Chicago Law School



STATE OF CONNECTICUT
Board of Governors for Higher Education
UNIVERSITY OF CONNECTICUT
STORRS, CONNECTICUT, 06269-4077

5/30/2017
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Lauren DiGrazia,
University Registrar

Name : Marissa Piccolo
Student ID: 2051751

**ISSUED TO STUDENT
IN SEALED ENVELOPE**

AN OFFICIAL SIGNATURE IS WHITE WITH
A BLUE BACKGROUND.

Send To: Marissa Piccolo
80 High Ridge Road
Trumbull, CT 06611

Plan : Political Science Major

ECON 1202	Principles of Macroeconomics	3.0	A
Notes: Honors Credit			
MATH 1071Q	Calculus for Busi & Economics	3.0	A
PHYS 1035Q	Physics of Environment w/Lab	4.0	A
POLS 1402	Intro International Relations	3.0	A
POLS 2062	Privacy in the Information Age	3.0	A

Notes: Honors Credit			
UNIV 1985	Special Topics	1.0	S

Course Topic(s): Holster Research Proposal Deve

TERM GPA :	4.000	TERM TOTALS :	17.0
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CUM GPA :	3.973	CUM TOTALS :	50.0
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Honors Program

Dean's List Liberal Arts & Sciences

Fall 2014 (2014-08-25 to 2014-12-14)

Course	Description	Units	Grade
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Program : Liberal Arts & Sciences

Plan : Economics as a Second Major

Plan : Political Science Major

ECON 2201	Intermed Microeconomic Theory	3.0	A
ECON 2202	Intermed Macroeconomic Theory	3.0	A
POLS 2998	Political Issues	3.0	A

Course Topic(s): Politics of Judicial Selection

Notes: Honors Credit

POLS 3999	Independent Study	3.0	A
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Notes: Honors Credit

Notes: Roper Center for Public Opinion Research

WGSS 1104	Feminisms and the Arts	3.0	A
TERM GPA :	4.000	TERM TOTALS :	15.0

CUM GPA :	3.981	CUM TOTALS :	65.0
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Honors Program

Dean's List Liberal Arts & Sciences

Spring 2014 (2014-01-21 to 2014-05-10)

Course	Description	Units	Grade
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Program : Liberal Arts & Sciences

Plan : Economics as a Second Major

ECON 1201	Principles of Microeconomics	3.0	A
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Notes: Honors Credit

NUSC 1165	Fundamentals of Nutrition	3.0	A
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POLS 1002	Intro to Political Theory	3.0	A-
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PP 1001	Introduction to Public Policy	3.0	A
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Notes: Honors Credit

STAT 1000Q	Intro to Statistics I	4.0	A
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UNIV 1784	Freshman Honors Seminar	1.0	A
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Course Topic(s): Human Rght Media Vis Culture

Notes: Honors Credit

TERM GPA :	3.947	TERM TOTALS :	17.0
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CUM GPA :	3.947	CUM TOTALS :	33.0
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Honors Program

Dean's List Liberal Arts & Sciences

Spring 2015 (2015-01-20 to 2015-05-09)

Course	Description	Units	Grade
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Program : Liberal Arts & Sciences

Plan : Economics as a Second Major

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Board of Governors for Higher Education
UNIVERSITY OF CONNECTICUT
STORRS, CONNECTICUT, 06269-4077

5/30/2017
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Lauren D'Grazia,
University Registrar

Name : Marissa Piccolo
Student ID: 2051751

**ISSUED TO STUDENT
IN SEALED ENVELOPE**

AN OFFICIAL SIGNATURE IS WHITE WITH
A BLUE BACKGROUND.

Plan : Political Science Major
CLCS 1102 Classics World Lit II 3.0 A
ECON 3441 Theory of Labor Markets 3.0 A
POLS 3622 American Political Leadership 3.0 A
POLS 3817 Law and Society 3.0 A
WGSS 3269 Women's Movements 3.0 A

Awarded Sophomore Honors Certificate.

TERM GPA : 4.000 TERM TOTALS : 15.0

CUM GPA : 3.986 CUM TOTALS : 80.0

Honors Program

Dean's List Liberal Arts & Sciences

Fall 2015 (2015-08-31 to 2015-12-20)

Course	Description	Units	Grade
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Program : Liberal Arts & Sciences

Plan : Economics as a Second Major

Plan : Political Science Major

Study in England

HIST 3993	Foreign Study	3.0	A
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Notes: Honors Credit

Notes: An Introduction to the History of the UK
Since the Second World War

INTD 3985	Special Topics	3.0	S
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Notes: Global Citizenship in Practice

INTD 3993	International Study	3.0	A
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Notes: Global Citizenship in the Making

POLS 3993	Foreign Study	3.0	A
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Notes: Honors Credit

Notes: New Media Politics and Society

TERM GPA : 4.000 TERM TOTALS : 12.0

CUM GPA : 3.988 CUM TOTALS : 92.0

Honors Program

Spring 2016 (2016-01-19 to 2016-05-07)

Course	Description	Units	Grade
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Program : Liberal Arts & Sciences

Plan : Economics as a Second Major

Plan : Political Science Major

Appointed University Scholar. Only 25 selected in
Junior year on GPA, rigor & imagination

of program. Enhanced curriculum is guided by a faculty
committee.

ECON 3451	Health Economics	3.0	A
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ECON 3473	Economic Development	3.0	A
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POLS 3802	Constitutional Law	3.0	A
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POLS 3837W	Civil Rights & Legal Mobilization	3.0	A
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Notes: Honors Credit

WGSS 3216	Women in Political Development	3.0	A
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TERM GPA : 4.000 TERM TOTALS : 15.0

CUM GPA : 3.990 CUM TOTALS : 107.0

Honors Program

University Scholar

Dean's List Liberal Arts & Sciences

Fall 2016 (2016-08-29 to 2016-12-18)

Course	Description	Units	Grade
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Program : Liberal Arts & Sciences

Plan : Economics as a Second Major

Plan : Political Science Major

ECON 2102	Economic History of the US	3.0	A
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ECON 2444	Women & Minorities Labor Mkt	3.0	A
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ECON 2500W	Writing in Economics	1.0	A
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POLS 3442	Politics Amer Foreign Policy	3.0	A
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POLS 4994	Senior Seminar	3.0	A
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Notes: Honors Credit

POLS 4997W	Senior Thesis	3.0	A
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Notes: Honors Credit

TERM GPA : 4.000 TERM TOTALS : 16.0

CUM GPA : 3.991 CUM TOTALS : 123.0

University Scholar

Honors Program

Dean's List Liberal Arts & Sciences

Spring 2017 (2017-01-17 to 2017-05-06)

Course	Description	Units	Grade
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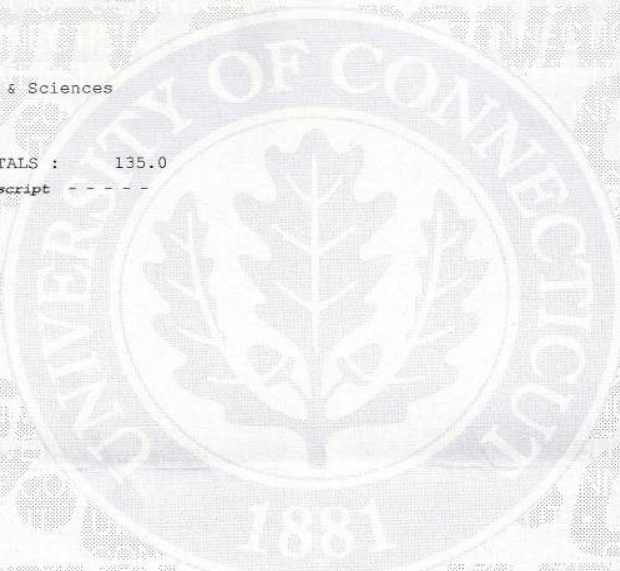
Lauren DiGrazia,
University Registrar

Name : Marissa Piccolo
Student ID: 2051751

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A BLUE BACKGROUND.

Program : Liberal Arts & Sciences
Plan : Economics as a Second Major
Plan : Political Science Major
ECON 3438 Contemp Problems in Economics 3.0 A
POLS 2998 Political Issues 3.0 A
Course Topic(s): How to Fix Elections
POLS 2998 Political Issues 3.0 A
Course Topic(s): Women and the Law
POLS 4997W Senior Thesis 3.0 A
Notes: Honors Credit
TERM GPA : 4.000 TERM TOTALS : 12.0
CUM GPA : 3.992 CUM TOTALS : 135.0
University Scholar
Honors Program
Dean's List Liberal Arts & Sciences
Undergraduate Career Totals
CUM GPA : 3.992 CUM TOTALS : 135.0
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Professor Aziz Huq
Professor of Law
The University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637
huq@uchicago.edu | 773-702-9566

April 05, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I write to strongly recommend Marissa Piccolo, of the University of Chicago Law School Class of 2022, for a clerkship in your chambers. I know Marissa primarily because she is presently a student in my Civil Rights Practicum in both Winter and Spring 2021, where she has demonstrated superlative research and writing skills. Marissa has a very strong academic record at the Law School. She is also an editor with a leadership position at the University of Chicago Law Review. Based on my experiences with her in that setting and my review of her transcript of her materials, I believe she will be a very fine law clerk, with special aptitude for the district-court context.

Let me speak first to my specific experience with Marissa before addressing her larger academic record. For the past five years, I have taught a Civil Rights Practicum at the Law School. The first year focused on policing issues, and in particular the use of stop and frisk. Subsequently years addressed questions of hate crimes. This year, students are working with a national not-for-profit on the role of social media platforms on disseminating racist and anti-Semitic material that incites or leads to actual violence.

Marissa is one of a small number of students who was worked on the First Amendment, tort, and consumer protection issues involved in this issue. She has worked closely both with me, and also with the attorneys at the not-for-profit. Marissa has written a series of memos reflecting her own legal research and judgment about several of those issues. Those issues have been uniformly excellent in quality: Marissa inevitably homes in upon the key questions. Her analysis of statutory meaning is careful and close to the textual bone. Her consideration of case-law also demonstrates a vigorous and lively mind in respect to legal research. Reading her memos (although not trying to go back to the original sources!), my sense is that Marissa is a thorough and careful analyst of legal resources. This experience with her, I believe, is a very strong signal that she will be an excellent law clerk: The skills that she has demonstrated to great merit in the practicum track very closely the skills required from a federal law clerk. I expect that she will obtain a high A in the practicum when the grades are assigned at the end of this term (in late June).

Beyond the context of the practicum, Marissa has performed exceedingly well across a wide variety of classes. She obtained very strong grades in her first year, in particular in her Criminal Law class. She has also done very well in the Administrative Law class that she recently took with Professor Jennifer Nou. (There is one class she has done less well in; I think the professor in that class has a quite distinct approach to the law, and I suspect that Marissa's imperfect grade in that class reflects a mismatch between her and that specific professor's approach to the law). But even beyond these grades, she has performed very well across a wide variety of different classes. Overall, I would anticipate that she will graduate from the law school in an upper echelon of her class. All this said, I think that Chicago grades tend to under-place students like Marissa in comparison to like students who are in the same rank of their class at a peer institution. Unlike its peers, Chicago abjures grade inflation in favor of a very strict curve round a median score of 177 (which is a B in our argot). There is no large movement from the median. Because Chicago grades on a normal distribution, and because it is on the quarter system, it is possible to be very precise about where a student falls in a class as a whole. This is not possible with a grading system of the kind used by some of our peer schools. These are designed to render ambiguous differences between the second tier of students and the third- and fourth-tiers. Marissa may not be at the very top of the class, but she is in the next best rank.

In addition to her sound performance in class, she has secured a place on the Law Review. She is waiting to hear about her note's publication, "The State Attorney General's Duty in Police Reform: Three Theories from Common Law, Case Studies, and Legal Ethics." Further, she has taken on a leadership role, guiding other students to publication with their Notes (called Comments here). I anticipate that she will perform this role excellently, given how well I have seen her work with other students in the practicum. She has also participated and did really well in the school wide moot court contest that I judged.

Marissa, I should further note, is the first in her family to attend law school. Yet she has enough savvy to secure an internship at U.S. Attorney's Office for the Southern District of New York, Criminal Division, and then to secure a place at Paul, Weiss, this coming summer. Accordingly, she will come to a clerkship somewhat versed in both government work, and also private sector lawyering. I further think that it is likely, given what I know of Marissa's ambitions, that she will return to work for the government

Aziz Huq - huq@uchicago.edu - 773-702-9566

(likely with a U.S. Attorney's office), later in her career.

Based on all this evidence, I am therefore a really enthusiastic supporter of Marissa's application. I would be happy to answer any questions you have about her candidacy, and can be reached at your disposal at huq@uchicago.edu and 703 702 9566.

Kind regards,

Aziz Huq

Aziz Huq - huq@uchicago.edu - 773-702-9566

Genevieve Lakier
Professor of Law
The University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637
glakier@uchicago.edu | 773-702-1223

April 12, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Re: Clerkship recommendation for Marissa Piccolo

Dear Judge Liman:

It is my great pleasure to recommend Marissa Piccolo for a clerkship in your chambers. Marissa is very smart, thoughtful, hard-working, and a delightful person to talk to in really any capacity. She is going to make a terrific lawyer and, I have no doubt, a wonderful law clerk also. I highly recommend her.

I first got to know Marissa when she was a student in my Criminal Law I class her first year at the University of Chicago Law School. Marissa immediately distinguished herself among a large group of competitive students by her level of engagement with the material. She asked terrific questions in class. During office hours, we frequently had terrific, meaty discussion of the philosophical, policy-related as well as doctrinal questions raised by the course material. Marissa took the job of being a law student very seriously—and also clearly loved the subject of criminal law. I was not all a unsurprised, therefore, when she wrote a very good exam, ending the class with an excellent grade (a 180 or “low A”). Her final exam was clear, succinct, careful, and interesting.

Marissa performed very well also when she took Constitutional Law II (Freedom of Speech) with me the fall of her 2L year. The subject matter of the class can be quite contentious, and the doctrine is famously, maybe infamously, complex. Plus the class, held during the pandemic, occurred entirely on Zoom. Despite these obstacles, Marissa participated enthusiastically, with her usual verve, and rigor. She contributed a great deal to the classroom discussion (as I am sure she does in many of her classes) and ended up receiving a very good 179 for the class (or high B).

Marissa’s excellent performance in both of the classes she took with me led me to choose her to be my research assistant over the summer 2020. She did not disappoint. The research assignment was challenging. I needed Marissa’s help compiling information for a new project I am working on, exploring police regulation of protests and its First Amendment implications. As part of that project, Marissa not only had to research the case law but call police departments across the country to find out their policies when it came to protests. She fulfilled both tasks thoroughly, intelligently, and creatively. I was extremely impressed with the quality of her work product and with her commitment to the work. These are both qualities that will obviously stand her in good stead in her legal career but will also, I think, make her a very good clerk.

Marissa has done very well in her other law classes as well, even while carrying a hefty load of extracurricular responsibilities. She supervises the student comments process for the University of Chicago Law Review (a job, I will say, that is perfectly suited to her interesting blend of warmth and analytic sharpness). She serves on the Law Students Association, the student governance board at the law school. And she actively competed in Moot Court, receiving an honorable mention for her excellent appellate advocacy.

Marissa is, in short, a multi-tasker who has proven herself adept at juggling competing responsibilities with aplomb. If it wasn’t obvious from what I wrote already, she is also a truly lovely person to have around. Friendly, cheerful and gregarious, she is also passionate, sensitive, professional and analytically very sharp.

For all these reasons, I highly recommend Marissa for a clerkship in your chambers. She would bring a great deal to the clerkship. If I can do anything to aid you in your decision, or if you have any questions, please do not hesitate to email (glakier@uchicago.edu) or call (773 702-1223).

Sincerely,

Genevieve Lakier

Professor of Law

Genevieve Lakier - glakier@uchicago.edu - 773-702-9494

Professor Lior J. Strahilevitz
Sidley Austin Professor of Law
The University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637
lior@uchicago.edu | 773-834-8665

April 06, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

Marissa Piccolo, a rising third-year student at the University of Chicago Law School, is going to be an outstanding law clerk. She possesses a first-rate intellect, maturity, charm, and sincerity. Beyond that, though, Marissa is just a phenomenal human being – an extravert with off-the-charts social intelligence and leadership skills. I recommend her for a clerkship in your chambers very enthusiastically.

I got to know Marissa when she enrolled in my Property class, which convened during the winter quarter (pre-pandemic, at least in the US) and continued during the spring quarter of 2020 (which was taught fully remote). Marissa was one of the strongest ten students overall in that class of 96 talented 1Ls. I cold-call students at random in every large course I teach, and the first time it was her turn to be in the hot seat Marissa was so poised and quick to see every angle that I wondered whether a 3L *Law Review* ringer had snuck into the room and somehow gotten on my class roster. After about ten minutes it was clear that there would be no stumping Marissa, and it was time to move on to the next student. During subsequent chats with Marissa, in office hours or student social events before the pandemic shut everything down, Marissa came across as extremely warm, kind, conscientious, and empathic. As my class switched to Zoom, several students requested that I open up breakout rooms either before or after class so students could engage virtually in the kind of small-talk that so many of them missed. Marissa was a regular at these get-togethers, and she put a lot of effort into keeping the class closely knit, even as she and her classmates scattered across the country for remote law school. She organized highly successful Zoom trivia nights and a Zoom painting class, and regularly organized masked group strolls on Chicago's lakefront.

Marissa did quite well on the final examination for Property. Her answers were gorgeously written and very well-conceived. She showed that she had studied hard, learned a lot, and was able to apply what she had learned in unexpected contexts. Marissa would have earned a 181 score, which is a strong A, had I been grading on our usual curve. But because of the pandemic all our spring quarter grading switched to pass-fail, so this excellent performance is not reflected on her transcript. Marissa has excelled academically in other respects as well. She is a Comments Editor on the *University of Chicago Law Review* and did well in our moot court competition too. (It's rare for Law Review staffers to compete in moot court simultaneously given the significant time commitments involved). This academic success follows earlier achievements like being awarded a Fulbright Scholarship to study in Belfast, where she earned a Masters in Global Security with First Class Honors, teaching English to first-graders in Shanghai, and graduating *summa cum laude* from the University of Connecticut, where she was a Truman Scholarship Finalist, gave a memorable TEDx talk on women in politics and the role of gender in the 2016 elections, and led the campus student Democrats chapter.

At the end of the spring quarter of Property, we finished class with a sense of accomplishment. The students had begun their 1L year under the most normal of circumstances and ended them so abnormally, with a Zoom sign-off and then an exam review period. But then things went from bad to worse. One of Marissa's closest friends in the 1L class, Elle, died suddenly. Elle had to be hospitalized in the winter because of a serious seizure, and Marissa had sprung into action to take care of her dear friend then. Elle and Marissa were two of my favorite students in Property and two peas in a pod – both shared a zest for life and made it a mission to get to know everyone in the class and foster a sense of community. Losing a student is always awful – it's sadly happened several times over my 19 years at Chicago – but losing Elle was especially devastating, because she was friends with nearly everyone in the class, and because the lock-down heightened everyone's sense of dread. I was scheduled to have office hours the day after Elle died, and I emailed the students to let them know that I'd find another time-slot to answer exam-related questions and use the upcoming office hours to host a gathering of students who wanted to share memories of Elle. Marissa immediately wrote to thank me for using office hours for this impromptu wake, and she offered me very helpful guidance about how to use the time in a way that would help her classmates heal. During our Zoom session she was open about her grief and vulnerability, displaying maturity and strength. Of all the students enrolled in Property last year Marissa was my go-to sounding board, the student who would give me the most candid and well-informed judgment about how the class was going and how her classmates were holding up during a stressful time. Few students think about what a valuable advisory role they might play for their faculty, especially in classes that are taught Socratically, but this insight was intuitive for Marissa.

Marissa grew up in Connecticut, the daughter of a now-divorced construction project manager and an elementary school teacher for special needs kids. When she isn't studying or socializing, she can be found swimming in Lake Michigan, playing soccer, or drinking coffee with a copy of *The Atlantic* or the *Times* on her lap. Marissa is a positive person who has made the most of difficult circumstances. I once asked Marissa what she would change about the Law School if she could, and she responded that she wishes it would last longer because she's going to miss it terribly. This is an unconventional sentiment, but there was no artifice in her answer. She's found her people.

Marissa Piccolo reminds me of star students who I have been very fortunate to teach in the past. Some apt comparisons are to Valeena Beety '06, who clerked for Martha Daughtrey and is now a tenured law professor at Arizona State, to Ruby Garrett '16, who clerked for Tanya Chutkan and LaShann DeArcy Hall and is now a star associate at Munger Tolles' Washington, D.C. office, or to Asha Spencer '10, who is now a partner at Bartlit Beck, the premier litigation boutique in the Midwest. All three were genuinely charismatic and altogether decent people who became first-rate lawyers.

Sincerely,
Lior J. Strahilevitz
Sidley Austin Professor of Law

Lior Strahilevitz - lior@uchicago.edu - 773-834-8665

Writing Sample Cover Note

This writing sample is an extended version of a case note I wrote on *Law Review*. I explored the impact of *United States v. Haymond*, 139 S. Ct. 2369 (2019), on mandatory revocation of supervised release under 18 U.S.C. § 3583(g). I argue § 3583(g) violates the right to a jury trial after applying *Alleyne v. United States*, 570 U.S. 99 (2013). It was inspired by attending supervised release hearings during my internship at the U.S. Attorney's Office. It was minimally edited by the law school's writing coach.

THE CONSTITUTIONALITY OF MANDATORY SUPERVISED-RELEASE REVOCATION AFTER *HAYMOND*
by Marissa Piccolo

Introduction

As this is read, about 4.5 million Americans are on probation, parole, or supervised release. PEW RESEARCH CTR., PROBATION AND PAROLE SYSTEMS MARKED BY HIGH STAKES, MISSED OPPORTUNITIES (2018). Double the country's incarcerated population, these programs make up a larger, hidden correctional system. For instance, if a defendant is found to have violated a condition of supervised release, a judge will either order a term modification, extension, or revocation—revocation meaning reimprisonment. Revocation procedures therefore have important implications for public safety, prisoner reintegration, and constitutional rights.

This note asks whether 18 U.S.C. § 3583(g) violates the right to a jury trial by mandating revocation when a defendant is found to have committed a drug or firearm offense during supervised release. This is an open question after the Supreme Court's divided opinion in *United States v. Haymond*, 139 S. Ct. 2369 (2019). *Haymond* struck down an analogous provision, § 3583(k), which mandated five-year revocation sentences for sex offenders who reoffended on supervised release. The Court held § 3583(k) violated the right to a jury trial. But no opinion's reasoning commanded a majority.

I argue § 3583(g) is also unconstitutional, despite an emerging consensus otherwise. It suffers from the same *Alleyne* problem identified in § 3583(k) by the *Haymond* plurality, because mandatory revocation increases a defendant's original mandatory minimum through judicial fact-finding and a preponderance of evidence. The plurality's approach is preferable to the concurrence's three-factor standard, because the latter fails to account for similarities between § 3583(k) and § 3583(g), and overstates the consequences of applying *Alleyne* to supervised release. Therefore, I recommend mandatory revocation is made advisory as a remedy for the *Alleyne* problem. This solution would also align with the legislative intent behind § 3583(d) and further the rehabilitative purposes of supervised release.

I. Supervised Release and Mandatory Revocation under § 3583(g)

Supervised release is a term of conditional release from prison, imposed as part of a defendant's original sentence. For example, a defendant may be sentenced to a 36-month prison term, and a subsequent 12-month term of supervised release.

Supervised release was created by the 1984 Sentencing Reform Act (SRA). It replaced the federal parole system, which allowed defendants to end their prison terms early. Originally, the SRA only mandated one condition of supervised release: defendants may not commit another local, state, or federal crime. But defendants would only be reimprisoned after a new prosecution for that crime. There was no mechanism to revoke supervised release until the Anti-Drug Abuse Acts of 1986 and 1988 introduced revocation hearings. Fiona Doherty, *Indeterminate Sentencings Returns: The Invention of Supervised Release*, 88 N.Y.U. L. Rev. 958, 1001 (2013).

Since, Congress has created a list of mandatory and discretionary conditions of supervised release. 18 U.S.C. § 3583. If a probation officer has probable cause that a condition was violated, a judge will hold a revocation hearing pursuant to Federal Rule of Criminal Procedure 32.1 and

§ 3583. Like a pretrial detention hearing, the normal rules of evidence do not apply. Under § 3583, the judge must fact-find by a preponderance of evidence that the defendant violated a condition. The judge may then order a term modification, extension, or revocation in response.

But some violations tie judges' hands and mandate revocation. Subsection 3583(g) mandates revocation if a defendant is found to have (i) possessed a controlled substance in violation of a condition set forth in § 3583(d), which encompasses any local, state, or federal drug offense, (ii) possessed a firearm in violation of federal law or another condition, (iii) refused to comply with ordered drug testing, or (iv) tested positive for illegal drugs over three times in one year. Under § 3583(d), there is a safety valve for a defendant who fails a drug test whereby the court may consider alternative, drug treatment programs.

II. *United States v. Haymond* and Mandatory Revocation under § 3583(k)

Before *Haymond*, there was another mandatory revocation provision, § 3583(k). Under § 3583(k), sex offenders faced a mandatory minimum revocation sentence of five years if found to have reoffended while on supervised release. *Haymond* struck down this provision for violating the right to a jury trial, but no opinion commanded a majority.

Justice Neil Gorsuch, writing for the plurality, reasoned § 3583(k) violated *Alleyne v. United States*, 570 U.S. 99 (2013). *Alleyne* held sentencing judges may not increase mandatory minimums through judicial fact-finding and a preponderance of evidence. *Id.* at 103. This violates the right to a jury trial, where facts are found by a jury and beyond a reasonable doubt.

The *Haymond* plurality made four conceptual moves. First, citing Blackstone and Merriam-Webster, the jury right applies to supervised release revocation hearings because the original “criminal prosecution” is still ongoing. *Haymond*, 139 S. Ct. at 2376 (plurality opinion). Second, under *Johnson v. United States*, 529 U.S. 694 (2015), “supervised release punishments” are treated as part of a defendant’s original sentence. *Haymond*, 139 S. Ct. at 2379 (plurality opinion). Therefore, third, when § 3583(k) mandated an additional five-year revocation sentence, it increased the defendant’s original mandatory minimum. Last, increasing a mandatory minimum by judicial fact-finding and a preponderance of evidence—as is done at a revocation hearing—violates *Alleyne*.

In a sole, brief concurrence, Justice Stephen Breyer declined to apply *Alleyne* to the supervised release context “in light of potentially destabilizing consequences.” *Id.* at 2386 (Breyer, J., concurring). Instead, Justice Breyer highlighted three factors which made § 3583(k) “less like ordinary revocation and more like punishment for a new offense, to which the jury right would attach.” *Id.* He stated § 3583(k) (i) “applies only when a defendant commits a discrete set of federal criminal offenses,” (ii) “takes away the judge’s discretion to decide” if there should be “imprisonment and for how long,” and (iii) “limits the judge’s discretion in a particular manner.” *Id.*

Haymond’s divided reasoning immediately created uncertainty over the constitutionality of § 3583(g). See *United States v. Belmontes*, 807 Fed.Appx. 292, 297 (5th Cir. 2020) (deciding to “[leave] the question of § 3583(g)’s continued viability for another day”). So far, three circuit courts have distinguished § 3583(g) from § 3583(k) and upheld the provision. *United States v. Seighman*, 966 F.3d 237, 244 (3rd Cir. 2020); *United States v. Doka*, 955 F.3d 290, 292 (2nd Cir. 2020); *United States v. Wilson*, 939 F.3d 929, 933 (8th Cir. 2019). But next, I argue that § 3583(g) suffers from § 3583(k)’s *Alleyne* problem, and that the plurality’s approach is preferable to Justice Breyer’s.

III. § 3583(g)'s *Alleyne* Problem

A. *Alleyne*'s Applicability to Supervised Release

As a threshold matter, the plurality is correct that the right to a jury trial, and therefore *Alleyne*, should apply to supervised release revocation hearings. The Court has already extended the jury right past “final judgement” and into “postjudgment sentence administration proceeding[s].” *Haymond*, 139 S. Ct. at 2379 (plurality opinion). Revocation hearings are another such proceeding, necessary for the administration of an ongoing sentence. And when the government “increase[s] a defendant’s authorized punishment contingent on a finding of fact, that fact—no matter how the State labels [the relevant proceeding]—must be found by a jury beyond a reasonable doubt.” *Ring v. Arizona*, 536 U.S. 584, 602 (2002) (a jury must find aggravating factors beyond a reasonable doubt before a death penalty is imposed).

The *Haymond* dissent pushes back, arguing supervised release is analogous to traditional parole, for which there was no right to a jury trial. But there is a critical difference between traditional parole and supervised release: traditional parole allowed defendants to be released from prison before their sentence was over, whereas supervised release is an additional term added after one’s full prison term has ended. The dissent acknowledges this difference, but argues it is “purely formal.” *Haymond*, 139 S. Ct. at 2388 (Alito, J., dissenting).

It is true that traditional parole and supervised release are functionally similar. Both are aimed at rehabilitation and granted conditionally, with ongoing reporting to probation officers. But the above, formal difference means that traditionally, a defendant who had their parole revoked “could [be] sentence[d] to serve only the *remaining* prison term authorized by the statute for his original crime of conviction,” for which there was a right to a jury trial. *Id.* at 2382 (plurality opinion) (emphasis in original). By contrast, when a defendant has their supervised release revoked, he or she may face “an additional mandatory minimum prison term well *beyond* that authorized by the jury’s verdict.” *Id.* (emphasis in original).

Further, “good time credit” is today’s equivalent of traditional parole—not supervised release. The Bureau of Prisons has continued to offer a modern, limited version of parole through this program. See 18 U.S.C. § 3624. The SRA instead envisioned supervised release as a distinct regime. Therefore, the *Alleyne* problem cannot be avoided by analogizing to traditional parole.

Justice Breyer declined to apply *Alleyne* to supervised release on different grounds, citing “potentially destabilizing” effects. *Haymond*, 139 S. Ct. at 2386 (Breyer, J., concurring). But this objection is rooted in policy and overstates the consequences. An *Alleyne* problem can be remedied by making mandatory revocation sentences advisory, similar to what the Court did in *United States v. Booker*, 543 U.S. 220 (2005). Defendants may still have their supervised release revoked, but this solution would simply preserve judicial discretion.

B. Applying *Alleyne* to § 3583(g)

Under *Alleyne*, courts may not increase mandatory minimum sentences through judicial fact-finding and a preponderance of evidence. But § 3583(g) crosses this bright line rule by mandating, at minimum, a new “term of imprisonment” if a defendant is found, through judicial fact-finding and a preponderance of evidence, to have committed a drug or firearm offense during supervised release.

This necessarily increases the defendant's original mandatory minimum. Even if the judge orders the mandatory "term of imprisonment" as time served due to prehearing detention, the defendant's original mandatory minimum still increased. Instead of the underlying mandatory minimum being, say, an 18-month prison term, it becomes an 18-month prison term *plus* time served.

Similar logic applies if the defendant's original mandatory minimum was only a "term of imprisonment." Under § 3583(g), that defendant now faces a second, mandatory "term of imprisonment." The mandatory minimum increased from one "term of imprisonment," to *two*. This crosses *Alleyne's* bright line.

The Eighth Circuit upheld § 3583(g) in *Wilson* because the provision does not "substantial[ly] increase" a defendant's original mandatory minimum in the same way as § 3583(k). 939 F.3d at 932 (quoting *Haymond*, 139 S. Ct. at 2374 (plurality opinion)). Under § 3583(k), all sex offenders faced a mandatory minimum revocation sentence of five years. In contrast, § 3583(g) "does not require a mandatory minimum potentially longer than the defendant's original sentence." *Id.* at 933.

But it is irrelevant to an *Alleyne* analysis whether the increase in the mandatory minimum is substantial. By focusing on whether the minimum was "substantially increased," the Eighth Circuit muddled the *Alleyne* analysis and relied on language in Justice Breyer's concurrence—the shortcomings of which I discuss next.

IV. Shortcomings of Justice Breyer's Concurrence

The three-factor standard Justice Breyer instead introduces asks whether a mandatory revocation provision (i) "applies only when a defendant commits a discrete set of federal criminal offenses," (ii) "takes away the judge's discretion to decide" if there should be "imprisonment and for how long," and (iii) "limits the judge's discretion in a particular manner." *Haymond*, 139 S. Ct. at 2386 (Breyer, J., concurring). But these factors fail to account for meaningful similarities between § 3583(g) and § 3583(k). Both provisions are more like criminal punishment, for which there is a right to a jury trial, than traditional parole, for which there is not.

For instance, in *Seighman*, the Third Circuit applied Justice Breyer's three factors and upheld § 3583(g). 966 F.3d at 239. Under the first factor, the court reasoned § 3583(g) does not mandate revocation for a "discrete set" of federal offenses in the same way as § 3583(k). *Id.* at 243. Subsection 3583(k) applied only to the several federal sex offenses listed by statute. In contrast, § 3583(g) mandates revocation categorically for local, state, and federal drug and firearm offenses. It does not list any federal offenses by statute. It also mandates revocation for some noncriminal conduct, like failing a drug test.

But regardless, § 3583(g) primarily mandates revocation for criminal conduct and therefore is uncomfortably close to resembling punishment for a new offense—Justice Breyer's ultimate concern. Because § 3583(g) covers all defendants, and mandates revocation for local and state crimes, it simply cannot enumerate relevant federal offenses in the same way § 3583(k) did for sex offenders. Under Justice Breyer's first factor, § 3583(g) is saved by its own expansiveness.

Under the second factor, courts have also upheld § 3583(g) because, although it mandates a prison term, it does not remove judicial discretion over the length like § 3583(k). *See, e.g., id.* at 244.

But the mandate itself indicates the sentence is more like punishment for a criminal offense than revocation of traditional parole. For instance, the drafters of the United States Sentencing Guidelines distinguished the conviction-sentencing guidelines and revocation-sentencing guidelines by making the former mandatory, and the latter advisory. See U.S. SENTENCING COMM’N, *Guidelines Manual*, Ch.7, Pt.A, intro. comment (Nov. 2018). And traditionally, grants and revocations of parole were entirely discretionary decisions made by board supervisors. Project, *Parole Release Decisionmaking and the Sentencing Process*, 84 Yale L.J. 812, 815-816 (1975).

Finally, in just a two-paragraph concurrence, Justice Breyer did not make clear what he intended the third factor, “limits the judge’s discretion in a particular manner,” to mean. But fundamentally, his ultimate concern was whether a mandatory revocation provision resembled criminal punishment or traditional parole revocation. He stated, “three aspects of [§ 3583(k)], considered in combination, lead me to think it is less like ordinary revocation and more like punishment for a new offense.” *Haymond*, 139 S. Ct. at 2386 (Breyer, J., concurring). In classic, Justice Breyer fashion, this signals the need for a flexible, nuanced analysis. Lower courts may have considered his three factors too narrowly, overlooking similarities between § 3583(g) and § 3583(k).

Conclusion

This note asks whether mandatory revocation under § 3583(g) is constitutional after *Haymond*. I argue that *Alleyne* should be applied, § 3583(g) suffers from the same *Alleyne* problem as § 3583(k), and Justice Breyer’s three-factor standard fails to account for meaningful similarities between the two provisions. Requiring a jury trial for all supervised release revocation hearings would be an impractical remedy. Instead, I recommend making all mandatory revocation provisions advisory, as the Court did when faced with a similar issue in *Booker*.

In addition to being practical, this remedy would align with the legislative intent behind § 3583(d) and the rehabilitative purposes of supervised release. Through § 3583(d), Congress introduced a “safety valve” whereby defendants no longer face mandatory revocation for failed drug tests. But under § 3583(g), those same defendants still face mandatory revocation if they violate a minor, state or local drug possession law. Although many drug and firearm offenses present a danger to the community and warrant revocation, the same simply cannot be said for the other minor offenses § 3583(g) encompasses. Tying judges’ hands and mandating a disruptive term of imprisonment inhibits the rehabilitative purposes of supervised release.

Justice Antonin Scalia put it best: the right to a jury trial “has never been efficient, but it has always been free.” *Apprendi v. New Jersey*, 530 U.S. 466, 498 (2000) (Scalia, J., concurring). Recognizing § 3583(g)’s *Alleyne* problem may seem overly formalistic, but it follows precedent and is preferable to the muddled, factor-based approach. Further, supervised release revocations account for a significant portion of prison admissions each year. PEW RESEARCH CTR., *supra*. Therefore, the consequences are significant for rehabilitation and preventing recidivism. In short, there is plenty of room to challenge the emerging consensus that § 3583(g) is constitutional.

Applicant Details

First Name	Isabel
Middle Initial	C
Last Name	Pitaro
Citizenship Status	U. S. Citizen
Email Address	ipitaro@jd20.law.harvard.edu
Address	<div> Address Street 77 East 12th Street, Apt 9EF City New York State/Territory New York Zip 10003 Country United States </div>
Contact Phone Number	9175831314

Applicant Education

BA/BS From	Brown University
Date of BA/BS	May 2016
JD/LLB From	Harvard Law School
	https://hls.harvard.edu/dept/ocs/
Date of JD/LLB	May 28, 2020
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Harvard Business Law Review
Moot Court Experience	No

Bar Admission

Admission(s)	New York
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Prior Judicial Experience

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	Yes

Specialized Work Experience

Recommenders

Apps, Antonia
aapps@milbank.com
2125305357

Suk-Gersen, Jeannie
jsg@law.harvard.edu
617-496-8834

Mainland, Grant
GMainland@milbank.com
212-530-5251

This applicant has certified that all data entered in this profile and any application documents are true and correct.

ISABEL CHRISTOPHOROU PITARO

ipitaro@jd20.law.harvard.edu • (917) 583-1314 • 77 East 12th Street Apt. 9EF New York, NY 10003

March 17, 2022

The Honorable Lewis J. Liman
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Dear Judge Liman:

I am writing to apply for the next available clerkship in your chambers. I graduated from Harvard Law School in 2020 and I am currently a second-year litigation associate at Milbank LLP in New York City.

Attached please find my resume, law school transcript, undergraduate transcript, and writing sample, as well as letters of recommendation from Antonia Apps and Grant Mainland, partners at Milbank LLP, and Jeannie Suk Gersen, a professor at Harvard Law School.

At Milbank, I have had the opportunity to work on civil and criminal matters at all stages of litigation. I have drafted complaints, briefs, and motions to be filed in federal court, prepared colleagues for oral argument, and interacted directly with clients. I have conducted discovery and worked to resolve discovery disputes, participated actively in depositions and court conferences and engaged in settlement negotiations. While in law school, I was the Editor-in-Chief of the *Harvard Business Law Review*, where I learned how to evaluate the quality of legal research, how to efficiently handle multiple legal writing projects at the same time, and how to produce excellent legal scholarship and writing. I believe these experiences have given me the substantive foundation and the research, writing, and management skills to be an effective law clerk in your chambers.

Thank you very much for taking the time to consider me for a clerkship. Please let me know if you would like any other information to evaluate my application.

Sincerely,



Isabel Pitaro

ISABEL CHRISTOPHOROU PITAROipitaro@jd20.law.harvard.edu • (917) 583-1314 • 77 East 12th Street Apt. 9EF New York, NY 10003**EDUCATION**

Harvard Law School, Cambridge, MA

JD, May 2020

Activities: *Harvard Business Law Review*, Editor-in-Chief

Women's Law Association, Board Member and Private Sector Committee Chair

International Human Rights Clinic, published report entitled "*No Justice for Me*" *Femicide and Impunity in Bolivia***Harvard Business School, CORE Credential**, Cambridge, MA

Business certificate program (high honors), May 2017

Brown University, Providence, RIBA, *magna cum laude* in International Relations, May 2016

Activities: Division I Varsity Women's Squash Team (2012-2016); Team Captain (2015-2016)

The Brearley School, New York, NY**WORK EXPERIENCE**

Milbank LLP, New York, NY

Summer Associate, Summer 2019; Associate, October 2020-Present

- Draft research memoranda, motions, and memoranda of law
- Conducted legal research and analysis, prepared partners and witnesses for depositions and court hearings, participated in depositions and court conferences, communicated directly with regulators and clients, carried out all facets of discovery, and represent federal criminal defendants as part of SDNY CJA program
- Teaching assistant for Antonia Apps' White Collar Criminal Law and Procedure class taught at Harvard Law School (2021-present)

U.S. Attorney's Office for the Southern District of New York, Criminal Division, New York, NY

Intern, Summer 2018

- Worked in the Securities and Commodities Fraud and the General Crime departments
- Assisted with investigations, trial preparation, legal research, and motions; drafted legal memoranda

Safe Passage Project, New York, NY

Intern, Summer 2017

- Worked on behalf of unaccompanied minors from Latin America facing deportation proceedings

English Conversation Auxiliary at IES Rey Pastor School, Madrid, Spain

Assistant Teacher, 2016-2017

- Taught English at a public school in Spain to children ages 12-18; helped plan and execute bilingual lessons

Hillary for America, New York, NY

Intern, Summer 2016

- Worked to expand internal diversity, hire staff and handle human resources issues, and enhance inter-departmental collaboration; planned and staffed events

Office of U.S. Senator Kirsten Gillibrand, New York, NY

Intern, Summer 2014

- Spoke daily with constituents, governmental agencies, and embassies to help resolve immigration matters

SKILLS AND INTERESTS

- Spanish (professional proficiency); French (intermediate)
- Interests include 15th and 16th century English history, international soccer, cooking, and skiing

Harvard Law School

Date of Issue: December 13, 2021
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Record of: Isabel Sophia Christop Pitaro
Current Program Status: Graduated
Degree Received: Juris Doctor May 28, 2020
Pro Bono Requirement Complete

JD Program				2234	Taxation	H	4
Fall 2017 Term: August 30 - December 19					Warren, Alvin		
					Fall 2018 Total Credits:		13
1000	Civil Procedure 6	H	4		Winter 2019 - Spring 2019 Term: January 07 - May 17		
	Rubenstein, William						
1002	Criminal Law 6	P	4	2195	Negotiation Workshop	P	4
	Gersen, Jeannie Suk				Netsch, Linda		
1006	First Year Legal Research and Writing 6A	P	2		Winter 2019 - Spring 2019 Total Credits:		4
	Roisman, Shalev				Spring 2019 Term: January 28 - May 17		
1003	Legislation and Regulation 6	P	4	2035	Constitutional Law: First Amendment	P	4
	Tushnet, Mark				Feldman, Noah		
1005	Torts 6	P	4	2048	Corporations	H	4
	Hanson, Jon				Clark, Robert		
Fall 2017 Total Credits: 18				2079	Evidence	P	2
Winter 2018 Term: January 02 - January 19					Rubin, Peter		
1007	Problem Solving Workshop D	CR	2	2281	Spanish for Public Interest Lawyers	CR	1
	Crawford, Susan				Summers, Nicole		
Winter 2018 Total Credits: 2				2254	White Collar Criminal Law and Procedure	H	2
Spring 2018 Term: January 22 - May 11					Apps, Antonia		
1020	Comparative Constitutional Law	P	4		Spring 2019 Total Credits:		13
	Jackson, Vicki				Total 2018-2019 Credits:		30
1001	Contracts 6	H	4		Fall 2019 Term: August 27 - December 18		
	Fried, Charles						
1006	First Year Legal Research and Writing 6A	P	2	2013	Bankruptcy	H	4
	Roisman, Shalev				Roe, Mark		
2077	Law and Legal Practice in Campaign Debates	P	2	2702	China and Hong Kong under the "One Country, Two Systems" Principle	CR	1
	Klain, Ron				Lau, Ming Wai		
1004	Property 6	P	4	2286	Complex Federal Investigations	P	2
	Glendon, Mary Ann				Gleeson, John		
Spring 2018 Total Credits: 16				2169	Legal Profession	H	4
Total 2017-2018 Credits: 36					Wilkins, David		
Fall 2018 Term: August 29 - December 20					Fall 2019 Total Credits:		11
2036	Constitutional Law: Separation of Powers, Federalism, and Fourteenth Amendment	H	4	7000W	Winter 2020 Term: January 06 - January 24		
	Gersen, Jeannie Suk				Independent Writing	CR	2
2510	Human Rights Advocacy	H	2		Clark, Robert		
	Crowe, Anna				Winter 2020 Total Credits:		2
8021	International Human Rights Clinic	H	3				
	Giannini, Tyler						

continued on next page


Assistant Dean and Registrar

Harvard Law School

Record of: Isabel Sophia Christop Pitaro

Date of Issue: December 13, 2021

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Spring 2020 Term: January 27 - May 15

Due to the serious and unanticipated disruptions associated with the outbreak of the COVID19 health crisis, all spring 2020 HLS academic offerings were graded on a mandatory CR/F (Credit/Fail) basis.

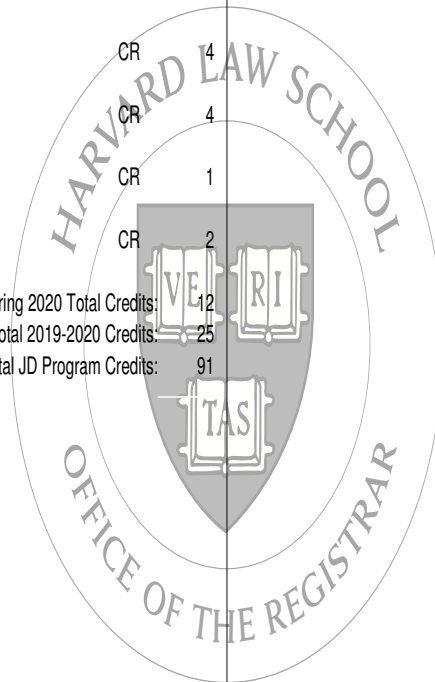
2265	Brexit and the British Constitution	CR	1
	Delaney, Erin		
2050	Criminal Procedure: Investigations	CR	4
	Crespo, Andrew		
2086	Federal Courts and the Federal System	CR	4
	Spencer, Benjamin		
2671	National Security Law and Practice	CR	1
	Olsen, Matthew		
2117	Nuremberg -- Law, The Individual and the Group	CR	2
	Sands, Philippe		

Spring 2020 Total Credits: 12

Total 2019-2020 Credits: 25

Total JD Program Credits: 91

End of official record



Isabel C Pitaro
Assistant Dean and Registrar

HARVARD LAW SCHOOL
 Office of the Registrar
 1585 Massachusetts Avenue
 Cambridge, Massachusetts 02138
 (617) 495-4612
www.law.harvard.edu
registrar@law.harvard.edu

Transcript questions should be referred to the Registrar.

~~~~~  
**In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.**  
 ~~~~~

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
 LL.M. (Master of Laws)
 S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

May 2011 - Present

<i>Summa cum laude</i>	To a student who achieves a prescribed average as described in the <u>Handbook of Academic Policies</u> or to the top student in the class
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipient(s)
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67 (B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

1969 to June 1998	General Average
<i>Summa cum laude</i>	7.20 and above
<i>Magna cum laude</i>	5.80 to 7.199
<i>Cum laude</i>	4.85 to 5.799

June 1999 to May 2010

<i>Summa cum laude</i>	General Average of 7.20 and above (exception: <i>summa cum laude</i> for Class of 2010 awarded to top 1% of class)
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipients
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

Prior Degrees and Certificates

LL.B. (Bachelor of Laws) awarded prior to 1969.

The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).


 Assistant Dean and Registrar

BROWN UNIVERSITY
Providence, Rhode Island 02912
OFFICIAL ACADEMIC TRANSCRIPT
401-863-2500

Name: Pitaro , Isabel Sophia Christop
Student Number: B00765454

Record Date: 12/10/21
Page 1 of 1

Code	Course Number	Course Title	Grade	Code	Course Number	Course Title	Grade
Fall 2012: Admitted as a Degree Candidate The College				Spring 2015: Returned From Exchange Program or Leave to Study Abroad			
For Work Completed At Advanced Placement Program (06/12)				Undergraduate Spring 2015			
MATH	0090	Introductory Calculus, Part I	T	HMAN	1970K	Law and Religion	A
MATH	0100	Introductory Calculus, Part II	T	POLS	1130	The American Presidency	A
Undergraduate Fall 2012				POLS	1260	Maps and Politics	A
ECON	0110	Principles of Economics	S	POLS	1821P	Political Psychology of IR	A
ENGL	0250F	Shakespeare's Present Tense	A	Undergraduate Fall 2015			
FREN	0400	Intermediate French II	B	FREN	1510C	A table!	S
POLS	0400	Intro to International Politics	A	HISP	0100	Basic Spanish	A
Undergraduate Spring 2013				HIST	1266C	English History, 1529-1660	A
FREN	0500	Writing and Speaking French I	A	POLS	1823Y	Global Governance	A
HIST	1850	American Legal/Constitutional Hist	A	Undergraduate Spring 2016			
SOC	1100	Intro Stats for Social Research	A	ENGL	0200L	Trial and Error	S
SOC	1620	Globalization/Social Conflict	S	HISP	0200	Basic Spanish	A
Undergraduate Fall 2013				HIST	0150D	Refugees: A 20th-C History	A
ANTH	0110	Anthro + Global Social Problems	A	TAPS	0220	Persuasive Communication	S*
CSCI	0020	The Digital World	A	Degree Awarded			
FREN	0600	Writing and Speaking French II	A	Bachelor of Arts			
INTL	1700	International Law	A	Magna Cum Laude			
MGRK	0100	Introduction to Modern Greek	S	May 29, 2016			
Undergraduate Spring 2014				AB - International Relations (Security and Society)			
FREN	1510G	La Sociabilité à la Française	S	-----			
HIST	1900	American Empire Since 1890	A	END OF TRANSCRIPT			
ITAL	0981	Machiavelli in Intl Context	A				
MGRK	0200	Introduction to Modern Greek	A				
POLS	0220	City Politics	A				
Fall 2014: Enrolled in Brown Exch Program-Paris							
For Work Completed At Brown Exch Program-Paris (09/14-01/15)							
EXCH	CRSE	Contemp Hist of Intl Relations	S				
EXCH	CRSE	Geography of Popltn: People & Lang	S				
EXCH	CRSE	History of French Revolution	S				
EXCH	CRSE	Transltn: Fren to Eng & Eng to Fr	S				

ISABEL PITARO



Robert F. Fitzgerald
Robert F. Fitzgerald
University Registrar

Milbank

ANTONIA M. APPS

Partner

55 Hudson Yards | New York, NY 10001-2163

T: 212.530.5357

aapps@milbank.com | milbank.com

January 10, 2021

VIA ELECTRONIC MAIL

Re: Letter of Recommendation for Isabel Pitaro

Dear Judge:

I write to give my strongest recommendation for Isabel Pitaro for a clerkship in your Chambers. Isabel was both a top student in my class at Harvard Law School and has worked closely with me as a litigation associate on several matters at Milbank LLP, where I am a partner in the litigation department. I can say unequivocally that she is the best junior associate I have worked with at the firm.

I am a former federal prosecutor from the Southern District of New York, clerked for a Second Circuit judge, was previously a partner at the Washington, DC, law firm Kellogg, Hansen, Todd, Figel & Frederick, and have now been a partner at Milbank LLP for over seven years. I also teach a class on white collar criminal law at Harvard Law School. I first met Isabel as a student in my class, where her insightful comments and enthusiastic participation in class discussion set her apart from her peers. She was a joy to have in my class.

Isabel first worked at Milbank as a summer associate in 2019, and rejoined Milbank in 2020 as a first-year associate. Isabel immediately distinguished herself as one of our star junior associates in our New York office, and is highly sought after by my litigation partners. She is smart, with excellent analytical skills, and is able to synthesize difficult legal and factual issues quickly. She has excellent writing skills and terrific judgement, with a meticulous attention to detail. She thinks ahead, anticipates issues, and is never flustered. She presents her conclusions and ideas in an organized, clear, and concise manner, both orally and in writing.

Isabel worked on an insider trading matter with me on behalf of a large investment bank, for which we conducted an internal investigation and reported our findings to a regulator. On many occasions, I relied on Isabel to present the facts directly to the client and to the regulator.

MILBANK LLP

NEW YORK | LOS ANGELES | WASHINGTON, D.C. | SÃO PAULO | FRANKFURT
LONDON | MUNICH | BEIJING | HONG KONG | SEOUL | SINGAPORE | TOKYO

She had a mastery of the facts, delivered the analysis succinctly and with poise, and had the judgement to know what was important and what was not. Most associates take years to learn these skills. I would often ask her to draft legal analyses to forward to the client and I rarely had to edit a single word before forwarding her work on.

Isabel was also instrumental in helping me prepare for a criminal trial in which I represented a defendant charged with Section 922(g) as a member of the Criminal Justice Act Panel. Isabel spotted the issues and drafted impeccable motions *in limine*. She communicated directly with the prosecutors and the client, and prepared cross-examination scripts for witnesses. Her judgment on how the jury might react to certain evidence was spot on. She synthesized all of the relevant evidence and could recall pertinent facts instantly. It would be an understatement to say that she punches above her weight.

Isabel consistently brings not only technical excellence but also enthusiasm, humor, and an upbeat attitude to her work. She has taken a leadership role at Milbank, including acting as a summer associate program coordinator, a task she volunteered for despite a very heavy workload, and in helping other associates (including those senior to her) learn the criminal process from arraignment to sentencing for cases in which I have been appointed to represent defendants under the Criminal Justice Act. She is also assisting in the firm's representation in a civil class action brought against the Suffolk County Police Department ("SCPD") alleging that the SCPD subjected present and former Latino residents of Suffolk County to discriminatory policing.

I am certain that Isabel will be an invaluable contributor in Your Honor's chambers. I would also be happy to answer any further questions you may have about her. Please do not hesitate to reach out to me on my cell phone, (646) 532-1698.

Very truly yours,



Antonia M. Apps

March 17, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

It is with great pleasure and the highest enthusiasm that I write this letter to support Isabel Pitaro's application to be one of your law clerks. Isabel is a 2020 graduate of Harvard Law School, where she was my student in two courses. I have every reason to think she will be a wonderful law clerk.

I had the opportunity to get to know Isabel very well as a student in my first-year Criminal Law course in the Fall of 2017 and in my Constitutional Law course in Fall of 2018. I found Isabel to be an exceptional student. She enthusiastically contributed to class discussions with thoughtful analyses and insights. She showed respect and consideration for her peers and their viewpoints. She was quick to understand and assess the legal and policy implications in the cases and doctrines we studied. Isabel also often engaged with the material outside of the classroom, her intellectual curiosity motivating her to come speak with me before and after class and in office hours, on a wide variety of topics. Her written work was excellent – concise, clear, logical, organized, and analytical.

Isabel is also well-rounded lawyer, at ease with policy and business concepts and adept at motivating and leading others. For instance, her work in her first year on the Harvard Business Law Review, a student-run journal of Harvard Law School, earned her the position of Managing Editor of the journal in her second year. In her third year, Isabel was elected co-Editor-in-Chief of the journal and ably steered the journal and its staff of almost one hundred individuals through the pandemic, producing all issues on schedule. Running the journal while taking the intensive courses that Isabel undertook required tremendous leadership, organization, and time management.

On a personal level, Isabel is an energetic, friendly, self-confident, inclusive, kind, bright and joyful presence both inside and outside of the classroom. She is a great listener, building on what others have said to make her points. As a result, she was very well liked among her classmates.

Isabel clearly possesses the legal, intellectual, and personal skills to be a highly valuable addition to a judge's chambers. Her can-do spirit and motivation will allow her to excel in the job. She will also be an uplifting and joyful presence in chambers, bringing people together and working well collaboratively to help reach even higher levels of excellence.

Please do not hesitate to tell me if I can be of further assistance.

Sincerely,

Jeannie Suk Gersen
John H. Watson, Jr. Professor of Law
Harvard Law School

Jeannie Suk-Gersen - jsg@law.harvard.edu - 617-496-8834

Milbank

GRANT R. MAINLAND*Partner*

55 Hudson Yards | New York, NY 10001-2163

T: 212.530.5251

gmainland@milbank.com | milbank.com

November 24, 2021

Re: Letter of Recommendation for Isabel Pitaro

I am a litigation partner at Milbank LLP. I write to enthusiastically recommend Isabel Pitaro, an associate at Milbank, for a clerkship in Your Honor's chambers. I have worked closely with Isabel, and I previously served as a law clerk to the Honorable Pierre N. Leval of the U.S. Court of Appeals for the Second Circuit. Based on that experience, I believe Isabel would be a superb law clerk.

My work with Isabel has been focused on a challenging and fast-moving lawsuit that Milbank, together with The Legal Aid Society, brought against New York City seeking an injunction requiring the installation of wireless internet in more than 200 homeless shelters across New York City, so that children residing in those shelters could participate in remote education during the COVID-19 pandemic. Isabel joined the case only weeks after joining our firm as a full-time associate, and quickly established herself as a key member of our team. Isabel personally identified a cause of action under the federal McKinney-Vento Homeless Assistance Act that eventually became a centerpiece of our claims. Her thorough research then explored all the strengths and weaknesses of the claim, and thoughtfully analyzed the various ways in which our COVID-specific legal theory could be analogized to existing McKinney-Vento precedent. Isabel also took the lead pen on our preliminary injunction motion and other key pleadings, prepared a senior member of our team for oral argument, managed an expedited and pressure-filled discovery process, and second-chaired a number of depositions. And all of this before being admitted to the New York State Bar! Isabel was instrumental in positioning us for what turned out to be a very favorable settlement with the City.

Isabel has also gained considerable experience in other areas, especially in securities and white-collar matters. In a large securities class action against a leading investment bank, Isabel prepared the initial draft of our answer to a 446-paragraph complaint, showing characteristic attention to detail and analytical rigor. Isabel has also played a lead role on a matter involving parallel government investigations and civil class actions, as well as a leanly-staffed insider trading investigation in which Isabel has been called on to consolidate and synthesize a complex fact

November 24, 2021

Page 2

pattern for the partner leading the case. Although I have not personally observed Isabel's work on the latter cases, I understand from my colleagues that she has performed well above her seniority level. Indeed, Isabel has generally become one of the most sought-after junior associates in our department.

Finally, on a personal level, Isabel is an absolute pleasure. She is energetic, down-to-earth, self-confident, and eager to learn more about the theory and practice of the law. She is well-liked at our firm by peers and superiors alike, ranging from senior partners to summer associates who look to her for friendly guidance. She is also willing and able to work long hours under significant pressure. I have no doubt that she will contribute to an upbeat and intellectually engaged atmosphere in Your Honor's chambers.

In sum, Isabel has the right skill set and demeanor for a federal clerkship. I strongly recommend her candidacy.

Very truly yours,

/s/ Grant R. Mainland

Grant R. Mainland

ISABEL CHRISTOPHOROU PITARO

ipitaro@jd20.law.harvard.edu • (917) 583-1314 • 77 East 12th Street Apt. 9EF New York, NY 10003

WRITING SAMPLE

Drafted Fall 2020

Used with permission from Milbank LLP.

A later version of this draft that incorporated edits by senior attorneys was publicly filed.

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiffs E.G., M.M., O.M., and Coalition for the Homeless (the “Coalition”), by their attorneys, The Legal Aid Society and Milbank LLP, respectfully submit this Memorandum of Law in Support of Plaintiffs’ Motion for a Preliminary Injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.

INTRODUCTION

Plaintiffs E.G., M.M., and O.M. are the parents of school-aged children who currently reside in New York City shelters and who have been unable, since the onset of the COVID-19 pandemic, to meaningfully participate in school due to the City’s failure to provide adequate internet access at the shelters where they reside. Plaintiff E.G. lives in a family shelter in Manhattan; Plaintiff M.M. lives in a confidential domestic violence shelter in New York City; and Plaintiff O.M. lives in a family shelter in Brooklyn. With schools currently closed for in-person learning, Plaintiffs’ children are unable to attend school in person. Further, since schools closed, Plaintiffs’ children have not been able to consistently attend school “virtually” through a computer, tablet, or other electronic device because the shelters where they live lack reliable internet service for residents. Accordingly, together with the Coalition and as a class on behalf of themselves and all others similarly situated,¹ Plaintiffs seek a preliminary injunction remedying this unlawful situation.

In New York, both state and federal law protect a homeless child’s right to receive an education. The New York State Constitution guarantees a “sound basic education” for each child

¹ The class, as defined in the Complaint, consists of all students enrolled in New York City Department of Education (“DOE”) schools or public charter schools who currently reside in, or at any time after March 26, 2020 resided in, shelters operated by the City of New York and/or any of its agencies, and who lack reliable internet access inside said shelters (the “Class” or “Class Members”).

residing in the State. *See* N.Y. Const. art. XI, § 1; *see also Campaign for Fiscal Equity, Inc. v. New York*, 655 N.E.2d 661, 665 (N.Y. 1995). New York State Education Law (“NYSEL”) § 3209 provides, among other things, that indigent children must be provided the necessary tools to attend school. N.Y. Educ. L. § 3209(7). Federal law commands the same result through the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11431-11435 (the “McKinney-Vento Act”), and the Equal Protection Clause of the Fourteenth Amendment, U.S. Const. Amend. XIV, § 1.

While none of these laws speak specifically about internet access, it can hardly be disputed that such access is a basic prerequisite to school attendance under the conditions of the COVID-19 pandemic, in which the City’s public schools have been operating largely remotely. Indeed, Defendants here—the City of New York, various responsible agencies, and their respective administrators—do not dispute the importance of adequate internet access. Mayor de Blasio himself recently instructed City officials to install “WiFi” (wireless access, via routers or access points, to a building’s wired internet connection) at all shelters across the City. Thus, Plaintiffs’ ability to establish a likelihood of success on the merits of their claims is clear.

The ongoing harm of being unable to attend school is irreparable. As set forth in more detail below, courts in this Circuit have recognized that disruption of a child’s education, even temporarily, threatens irreparable injury. *See, e.g., Orozco by Arroyo v. Sobol*, 674 F. Supp. 125, 128 (S.D.N.Y. 1984) (“Interruption of a child’s schooling[,] causing a hiatus not only in the student’s education but also in the other social and psychological development processes that take place during the child’s schooling, raises a strong possibility of irreparable injury.”). In passing the McKinney-Vento Act, which aims to prevent the disruption to a child’s education that occurs when obstacles posed by homelessness intervene, Congress has also recognized this harm. *See*,

e.g., 42 U.S.C. § 11431(2) (guarding against “regulations, practices, or policies” that “may act as a barrier to the . . . attendance or success in school of . . . homeless children and youths”).

Finally, the equities tip decidedly in favor of an injunction. Without such relief, Plaintiffs’ children and other students living in shelters will miss most, if not all, of the 2020-2021 school year. Defendants’ current plan is to complete installation of WiFi at all shelters housing students by next summer at the earliest, and even that deadline assumes Defendants are able to meet what they themselves deem an “aggressive goal.” For many homeless students, school is the rare bright spot of stability in the midst of otherwise highly unsettled circumstances. This is especially so during the COVID-19 pandemic, which has disproportionately affected indigent Black and Hispanic/Latinx New Yorkers. By contrast, the only burden Defendants can point to is that the injunction will cause them to treat the situation with the urgency it so plainly requires.

In sum, Plaintiffs easily satisfy the standards for preliminary injunctive relief. Accordingly, Plaintiffs respectfully request that the Court issue a preliminary injunction ordering Defendants to equip all shelters housing school-aged children with reliable WiFi access as soon as is reasonably practicable, but in no event later than January 4, 2021, so that the students living in those shelters can regain access to their education.

FACTUAL BACKGROUND

In March 2020, New York City became the epicenter of America’s COVID-19 outbreak. (Compl. ¶ 33.) By March 15, the scale of the pandemic had forced the City’s public schools to close their doors to in-person education. (Compl. ¶ 34.) With little warning, the more than one million students in the City’s public schools had to adjust to an entirely remote education. (*Id.*)

To receive a remote education, students must have a device all to themselves and a strong, reliable internet connection that allows them to complete their remote assignments and participate in their classes using videoconferencing software. (Compl. ¶ 35.) This proved particularly

challenging for the estimated 114,000 homeless students enrolled in New York City’s public schools. (Compl. ¶ 34.) For the City’s homeless students, the ability to attend school means much more than the opportunity to attend class. (Compl. ¶ 39.) School provides homeless children with meals; physical and mental health services; a support network of teachers, friends, and administrators; and the tools to break the cycle of poverty. (*Id.*) When the City’s school system moved to a remote format, the stability provided by school was suddenly stripped away from the City’s most vulnerable students, leaving many unable to even attend their classes because they lacked the requisite technology. (Compl. ¶¶ 39-40.)

At first, the City seemed to understand the scale of the educational barriers that students living in homeless shelters, faced. (Compl. ¶¶ 36; 39-40.) In recognition of the importance of internet access to a student’s ability to receive a remote education, Defendant Carranza announced in March 2020 that the City planned to distribute iPads equipped with T-Mobile cellular plans to students in need. (Compl. ¶ 36.) Defendants distributed over 300,000 devices to help students connect to the virtual classroom, a laudable effort but one that was immediately beset with problems. Compl. (¶¶ 37-42.)

The success of Defendants’ iPad distribution plan depended on the ability of students to attend class by establishing a robust connection to the internet using cellular service. (Compl. ¶¶ 38, 41.) As any New Yorker knows, the strength and reliability of a cellular connection is location-dependent, and the City is beset with “dead zones” in which using cellular service is impossible. (Compl. ¶¶ 41-42.) Unfortunately, many New York City homeless shelters are located in these “dead zones” or in locations where only a weak connection is available. (Compl. ¶ 41.) Unlike some of their peers, students living in homeless shelters cannot avoid these cellular connectivity struggles by connecting to WiFi because most shelters throughout the City either do not have WiFi

or do not allow residents to access the existing WiFi from their units. (*Id.*)

As early as the spring of 2020, Plaintiff Coalition for the Homeless informed Defendants that students in shelters were unable to attend class remotely due to a lack of reliable internet access. (*Id.* ¶¶ 59-61; *see also* Ex. A.²) Some students faced such severe connectivity issues that they could not even access and download their homework assignments on their iPads. (Compl. ¶ 42.) Throughout the summer and into the fall, the Coalition continued communicating with the City in hopes that the City would take action to ensure students living in shelters like Plaintiffs and other Class Members were able to attend school. (Compl. ¶¶ 67-68; *see also* Exs. B & C.) In response, Defendants acknowledged the urgency of the situation but failed to put in place a plan to address it expeditiously, despite the high probability that the 2020-2021 school year would be conducted, at least in part, remotely, and the many months Defendants had to prepare for this eventuality. (Compl. ¶¶ 64-66.)

The Coalition was not the only party to express concerns to Defendants. Both the New York City Bar Association and New York City Comptroller Scott Stringer wrote letters to Mayor de Blasio and other City officials raising concerns about the inability of homeless students to access WiFi for the purposes of education. (Exs. D & E.) Despite these expressions of concern and Defendants’ awareness that the iPads provided to students often were rendered unusable by cellular dead zones—making WiFi essential—Defendants still neglected to provide such service in shelters. (Compl. ¶¶ 44-45, 47-48, 53-56.)

On July 8, 2020, Mayor de Blasio announced that the City’s public schools would not fully re-open for the 2020-2021 school year but would instead adopt a “blended learning” model.

² “Ex. _” refers to the exhibits attached to the Declaration of Grant R. Mainland in Support of Plaintiffs’ Motion for Preliminary Injunction, filed contemporaneously herewith.

(Compl. ¶ 66.) Under this model, families could choose whether their children would attend school solely through remote learning or through a program that involved both remote and in-person learning. (*Id.*) Either way, all students would be participating in some remote education for the 2020-2021 school year. (*Id.*) Defendants knew more than two months before the school year began that all students would be participating in remote learning, but they continued to ignore appeals from advocacy groups imploring them to look into installing WiFi in the City’s shelters. (Compl. ¶¶ 65-67.)

The 2020-2021 school year began on September 16, with all students attending remotely. (Compl. ¶ 74.) From the minute the school year began, students living in shelters struggled to attend their online classes and complete their online coursework due to connectivity issues. (Compl. ¶ 75.) The Coalition continued to bring these issues to Defendants’ attention throughout September and October, and yet Defendants failed to meaningfully address the problem. (Compl. ¶ 77.)

On October 8, after months of Defendants’ prolonged inaction, counsel for Plaintiffs served Defendants Carranza and Carter with a letter demanding that they take action to install WiFi in all City shelters. (Ex. F.)

On October 14, 2020, Defendant’s counsel responded, dismissing WiFi installation as unnecessary and calling it Plaintiffs’ counsel’s “preferred solution.” Defendants argued that cellular-based connectivity—which had been demonstrably inadequate for months—was sufficient. (Ex. G.) By October 26, 2020, after this letter raised sufficient public and media scrutiny, Defendants had changed their tune. In a press conference, Mayor de Blasio instructed City officials to install WiFi at all homeless shelters and acknowledged that WiFi access was the only way to ensure that homeless students could consistently and reliably access their education. (Compl. ¶¶ 81-82.)

While Defendants have finally acknowledged the problem, their delay in resolving the lack of WiFi in shelters persists and requires the injunctive relief sought by this motion. Following Mayor de Blasio’s directive, Defendant New York City Department of Homeless Services (“DHS”) wrote to Plaintiff’s counsel explaining that it intended to complete WiFi installation at 27 “priority sites”—out of a total of 240 shelters requiring WiFi installation—at some undetermined time “this winter” (*i.e.*, potentially as late as March 20, 2021). (Ex. H.) As for the remaining 213 shelters, DHS stated that installation would be complete in the summer of 2021 (*i.e.*, after the 2020-2021 school year), and even then, only if it was able to meet what it characterized as an “aggressive goal.” (*Id.*) On this schedule, WiFi installation would only be completed after the end of the 2020-2021 school year, leaving students in shelters virtually locked out from their education for an entire year. (*Id.*)

On October 30, 2020, in an attempt to communicate the insufficiency of this solution, counsel for Plaintiffs served Defendants with a second letter reiterating the need for immediate action. (Ex. I.) In their response, which came more than two weeks later, Defendants yet again refused to provide concrete details on when shelters throughout the City could expect to have WiFi and attempted to shift the blame for the connectivity issues onto Plaintiffs and other Class Members.³ (Ex. J.)

On November 18, 2020, the City announced that all schools would again close to in-person education in response to an uptick in the City’s COVID-19 positive test rates, making the need to end the lockout of students in shelters by installing WiFi in New York City’s shelters even more urgent. (Compl. ¶ 88.) Now, without a reliable WiFi connection, Plaintiffs’ children and other members of the Class may not receive any education whatsoever.

³ Defendants tried to minimize their role in preventing Plaintiffs from accessing their education by suggesting that “human error” was the real cause of the connectivity issues that Plaintiffs were facing. (Ex. J.)

ARGUMENT

The children of Plaintiffs E.G., MM, and O.M., and all other members of the Class, are entitled to receive a sound basic education notwithstanding their lack of a fixed and regular nighttime residence. That entitlement arises under multiple sources of law: Article XI § 1 of the New York State Constitution, NYSEL § 3209, the McKinney-Vento Act, and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Since March 2020 when the COVID-19 pandemic closed the physical doors to New York City schools, Plaintiffs have been denied this right. This Court should grant a preliminary injunction that would reopen the virtual door to school for Plaintiffs and other Class Members by providing reliable and consistent internet access in the City's shelters.

I. PLAINTIFFS AND OTHER CLASS MEMBERS ARE ENTITLED TO A PRELIMINARY INJUNCTION RESTORING THEIR ACCESS TO A SOUND BASIC EDUCATION

An applicant for a preliminary injunction must demonstrate “(a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief.” *Cacchillo v. Insmmed, Inc.*, 638 F.3d 401, 406 (2d Cir. 2011) (citation and quotation marks omitted); *Orozco*, 674 F. Supp. at 127-28 (S.D.N.Y. 1987). Although the burden of proof is higher on a party that seeks “a mandatory preliminary injunction that alters the status quo by commanding some positive act,” *Cacchillo*, 638 F.3d at 406, that heightened standard does not apply where, as here, an injunction requires a party to do only what it “‘should have done earlier.’” *Li v. Certain Underwriters at Lloyd’s*, 183 F. Supp. 3d 348, 361 (E.D.N.Y. 2016) (quoting *Johnson v. Kay*, 860 F.2d 529, 541 (2d Cir. 1988)); see also *In re WorldCom, Inc. Sec. Litig.*, 354 F. Supp. 2d 455, 463 (S.D.N.Y. 2005). Plaintiffs easily satisfy the standard for the preliminary injunctive relief sought herein.

A. Plaintiffs and Other Class Members Will Suffer Irreparable Harm Without an Injunction.

Irreparable harm is “the single most important prerequisite for the issuance of a preliminary injunction.” *Rodriguez ex rel. Rodriguez v. DeBuono*, 175 F.3d 227, 233-34 (2d Cir. 1998). Irreparable harm is established where, absent a preliminary injunction, the plaintiff “will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm.” *Singas Famous Pizza Brands Corp. v. New York Advert. LLC*, 468 F. App’x 43, 45 (2d Cir. 2012).

Here, Defendant’s failure to provide WiFi access to Plaintiffs and other school-aged residents of the City’s shelters is clearly causing irreparable harm by disrupting Plaintiffs’ and other Class Members’ education. That disruption is not a mere inconvenience, but a significant setback in Plaintiffs’ and other Class Members’ learning. Academic literature shows that even a **2-month cessation** in learning during summer break can cause a child’s core competencies to meaningfully regress as compared to the end of the preceding school year. *See* David M. Quinn & Morgan Polikoff, *Summer learning loss: What is it and what can we do about it?* The Brookings Institution (Sept. 14, 2017), available at www.brookings.edu/research/summer-learning-loss-what-is-it-and-what-can-we-do-about-it/.⁴ The same studies show that low-income Black and Hispanic/Latinx students fare worse than their higher income or white peers.

Here, Class Members face the prospect of missing as much as **18 months of their education**, extending from the closure of schools in March 2020 to the beginning of the school year in September 2021, when WiFi installation will finally be complete according to DHS’s

⁴ The City’s Fiscal Year 2020 Mayor’s Management Report cites an 85% attendance rate for school-age children who live in the DHS-run shelters, placing them at an additional disadvantage even pre-pandemic. *See* Mayor’s Management Report, Fiscal 2020, The City of New York (dated Sept. 2020), available at www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/2020_mmr.pdf.

purportedly “aggressive goal.” Indeed, even the small percentage of shelters (11.25%) that DHS has designated as “priority sites” may not have functional WiFi until March 2021, which means that children in the shelters with the biggest connectivity problems will likely lose **one year of their education**. This lost time is unrecoverable. At best, it may require these children to repeat a year of school, delaying their pursuit of higher education or entry into the workforce.

The harm is not only educational in nature, but also psychological. For children living in shelters, school serves as a rare source of stability in otherwise unstable lives and personal circumstances. For many children in the dire circumstance of homelessness, public schools provide a support system with benefits that cannot be calculated, ranging from teachers and administrators who track students’ academic and developmental progress, to extracurricular sports and enrichment activities, active friendships with classmates, and more. By denying Plaintiffs and other Class Members the WiFi access that is necessary to enter the virtual classroom, Defendants are denying them these critical physical, developmental, and emotional benefits that go well beyond the essentials of literacy and mathematics.

Congress, the U.S. Supreme Court, and the Courts of this Circuit and District have recognized the irreparable nature of the harm children suffer when their education is disrupted or impeded. Indeed, the McKinney-Vento Act was passed precisely because Congress appreciated the irreparable harm that homelessness could cause to children if it was allowed to impede their education. In passing the McKinney-Vento Act, Congress specifically observed that disruptions to a homeless student’s education have injurious effects on the development of homeless children. *See, e.g.*, H.R. Conf. Rep. No. 100-174, at 69 (1987). Congress also recognized that interference with homeless students’ education can impede them from achieving the educational success necessary to break the cycle of homelessness. *Id.* This is the reason that the McKinney-Vento Act

mandates that State and local agencies “review and undertake steps to revise” any “regulations, practices, or policies” that “may act as a barrier to the . . . attendance or success in school of . . . homeless children and youths.” 42 U.S.C. § 11431(2).

The United States Supreme Court has also observed:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954); *see also Cox v. Brown*, 498 F. Supp. 823, 828-29 (D.D.C. 1980) (“[A]bsent injunctive relief, [plaintiffs] will suffer the irreparable harm of lacking each day of their young lives an appropriate education . . .”).

The courts of this Circuit likewise have recognized that even a brief disruption of a child’s education can have grave effects. “Interruption of a child’s schooling[,] causing a hiatus not only in the student’s education but also in the other social and psychological development processes that take place during the child’s schooling, raises a strong possibility of irreparable injury.” *N.J. v. New York*, 872 F. Supp. 2d 204, 214 (E.D.N.Y. 2011) (quoting *Ross v. Disare*, 500 F.Supp. 928, 934 (S.D.N.Y. 1977)); *Orozco*, 674 F. Supp. at 128 (same); *see also Cronin v. Bd. of Educ. of E. Ramapo Cent. Sch. Dist.*, 689 F. Supp. 197, 204 (S.D.N.Y. 1998) (disruption in schooling constitutes irreparable harm because of the accompanying loss of education, vocational, and social development); *V.W. v. Conway*, 236 F. Supp. 3d 554, 588-89 (N.D.N.Y. 2017) (“[D]eprivation of

education services by . . . defendants hinder[ed] important aspects of [plaintiffs'] adolescent development.”). Children such as Plaintiffs who reside in shelters, and who lack the stable home environment that many other students enjoy, have a particular need for continuity in their education. This need cannot wait until the end of a trial; at that point, it will plainly be too late to avoid the harm that could be stopped, or at least mitigated, through immediate injunctive relief. *Cf. Martinez v. Cuomo*, 459 F. Supp. 3d 517, 526 (S.D.N.Y. May 12, 2020) (concluding irreparable harm to Deaf plaintiffs where plaintiffs were denied of “timely access to critical information”).

B. Plaintiffs Are Likely to Succeed on the Merits of Their Claims.

As an initial matter, Plaintiffs need not show likelihood of success on the merits to be afforded injunctive relief. Rather, because the balance of hardships so plainly tips in Plaintiffs’ favor, as set forth in Point I.C *infra*, Plaintiffs need only show “sufficiently serious questions going to the merits to make them a fair ground for litigation.” *Cacchillo*, 638 F.3d at 406. But even if the Court were not to resolve the balance of equities in Plaintiffs’ favor, Plaintiffs are nonetheless likely to succeed on the merits of their claims.

Defendants’ conduct in this case is not merely an arguable or technical violation of law; it is a wholesale abdication of their legal obligations under federal and state constitutional and statutory regimes, many of which are specifically designed to protect homeless students such as Plaintiffs from this sort of neglect. Indeed, by conceding that WiFi should be installed in all shelters across the City, Mayor de Blasio himself apparently recognized that the status quo does not comport with the City’s legal obligations. Nor have Defendants argued otherwise in response to correspondence from Plaintiffs’ counsel. In their correspondence, Defendants have focusing entirely on their insufficient proposed remedy rather than on the conduct that they implicitly recognize to be unlawful. This is understandable, as at least four different legal violations are clear.

First, Article XI § 1 of the New York Constitution, as interpreted by the New York Court of Appeals, requires New York State and its instrumentalities to provide a “sound basic education” to all students within the state. *Bd. of Educ. v. Nyquist*, 439 N.E.2d 359, 369 (N.Y. 1982). This means that all students in New York City, including homeless students, must be given “the opportunity for a meaningful high school education . . . [that] prepares them to function productively as civic participants.” *Campaign for Fiscal Equity, Inc. v. New York*, 801 N.E.2d 326, 332 (N.Y. 2003). Here, the issue is not the *soundness* of the education New York City is providing to Plaintiffs and other Class Members, but the fact that ***it is not providing them with any education at all***. Defendants’ failure to provide students living in shelters with the WiFi necessary to access their virtual classrooms thus directly contravenes the New York Constitution.

Second, Defendants have violated their duties under NYSEL § 3209. Under § 3209(6)(b), officials must review and revise any policies or practices “that may act as barriers to the enrollment or attendance of homeless children.” Officials must also provide homeless children with “necessaries to enable them to attend” school. N.Y. Educ. L. § 3209(7). Defendants’ inexcusable delay in installing WiFi in shelters is a clear barrier to homeless students’ ability to attend school during a pandemic that has forced education online. Absent injunctive relief, that barrier threatens to persist for as long as 18 months from the March 2020 onset of the COVID-19 pandemic, in violation of New York State Education Law § 3209.

Third, the McKinney-Vento Act protects Plaintiffs’ and other Class Members’ rights to access, and succeed in, “the same free, appropriate public education . . . as provided to other children and youths.” 42 U.S.C. § 11431(1). The Act also requires local educational agencies to review and revise any policies that “may act as a barrier to the . . . attendance or success in school of . . . homeless children and youths.” 42 U.S.C. § 11431(2). The McKinney-Vento Act confers

enforceable rights upon its beneficiaries, who may sue to enforce these rights under 42 U.S.C. § 1983. See *Nat'l Law Ctr. on Homelessness & Poverty v. New York*, 224 F.R.D. 314, 319 (E.D.N.Y. 2004); *Lampkin v. District of Columbia*, 27 F.3d 605, 612 (D.C. Cir. 1994). Defendants' failure to provide WiFi in shelters has prevented Plaintiffs and other Class Members from receiving their guaranteed free and appropriate education. For eight months, Defendants delayed installing WiFi in shelters notwithstanding the numerous complaints they received from students in shelters who were unable to connect to the virtual classroom and from advocates seeking relief on their behalf. For eight months, while other students enjoyed the opportunity to connect and participate with their instructors, submit assignments, and receive feedback, students in shelters were denied the same opportunity as a direct result of Defendants' actions. Although Defendants now admit the need to install WiFi in shelters throughout the City, they are content to do so on a timeline that will involve a continuing and profound disruption to Class Members' education in the meantime—a burden borne uniquely by children living in shelters. This conduct runs afoul of the McKinney-Vento Act.

Finally, the Fourteenth Amendment to the U.S. Constitution requires states to provide to all people within their jurisdiction “the equal protection of the laws.” U.S. Const. Amend. IV, § 1. The Equal Protection Clause has been held to apply to state policies or practices that interfere with homeless students' access to public school education, which are subject to a heightened standard of review. See e.g., *Nat'l Law Ctr. on Homelessness & Poverty* 224 F.R.D. at 321-22; *Plyler v. Doe*, 457 U.S. 202, 216-17 (1982). Under that heightened standard, Defendants have failed to provide Plaintiffs and other Class Members with equal protection of the law by imposing upon them, through unequal policies and practices, impediments to educational access that children outside of shelters generally do not face.

Plaintiffs’ allegations plainly show sufficiently serious questions going to the merits of these constitutional and statutory claims, which is all Plaintiffs must show given that the balance of hardships weigh in favor of Plaintiffs, as set forth in Section C, *infra*. Even if the Court were to balance the hardships differently, however, Plaintiffs are likely to succeed on the merits; indeed, Defendants do not appear to dispute them.

C. The Balance of Hardships Weighs in Favor of Plaintiffs.

Given Plaintiffs’ likelihood of success on the merits, Plaintiffs need not show that the balance of hardships weighs in their favor. *See Cacchillo*, 638 F.3d at 406 (movant showing irreparable harm and likelihood of success on the merits is entitled to preliminary injunctive relief without need for balance of hardships analysis). But even if that were not the case, the balance of hardships analysis is not a difficult one here.

Should the Court decline to issue an injunction, Plaintiffs’ children would miss a significant amount of school, fall further behind in their studies, and miss opportunities to develop intellectually and socially. Each additional day that Plaintiffs are denied access to their education disrupts their development and puts them at a greater risk of low educational achievement. During a global pandemic that has upturned their lives, Plaintiffs’ children should not have to endure the additional stress of being unable to get online to attend school each day due to Defendants’ refusal to remedy the issue in a timely manner.

By contrast, any burden on Defendants is minimal. The only “harm” to Defendants would be the cost and effort of providing WiFi in the City’s shelters—something that Defendants are already constitutionally and statutorily obligated to do under the conditions of the pandemic. Many shelters that already have some form of WiFi installed for shelter staff block shelter residents from accessing that WiFi. Consequently, providing students in these shelters with access to WiFi would require no more than expansion of this network, which should be a quick and relatively low-cost

undertaking in the context of New York City’s annual budget. In setting forth their patently indefensible timeline for City-wide WiFi installation at shelters, Defendants have failed to articulate a legitimate reason why installation cannot be completed sooner.

Public policy also strongly favors the issuance of an injunction. Fair administration of public schools in a manner that does not discriminate against or disadvantage homeless children is an important public goal. *See Lavelle v. Quinones*, 679 F. Supp. 253, 259 (E.D.N.Y. 1988) (“[M]aintenance of public confidence in the integrity of the administration of the schools is of concern to the entire city.”). Defendant DOE has pledged its commitment to “providing every single child, in every classroom, in every New York City public school, with a rigorous, inspiring, and nurturing learning experience.” *See Equity and Excellence for All*, N.Y.C DEPARTMENT OF EDUCATION, available at <https://www.schools.nyc.gov/about-us/vision-and-mission/equity-and-excellence>. As DOE has emphasized, “[t]hat is true **regardless of family income**, race, nationality, disability, language spoken at home, sexual orientation, or gender identification.” *Id.* (emphasis added). The injunctive relief sought herein would hold not “harm” DOE, but rather hold it to its own commitments.

Finally, homelessness is a societal problem, and the public interest is served by breaking the cycle of poverty that leads to homelessness. As Congress has acknowledged, education plays a key role in breaking this cycle. *See, e.g.*, H.R. Conf. Rep. No. 100-174, at 69 (1987). If an injunction is issued, and Plaintiffs and other Class Members are given a fair opportunity for educational achievement, New York City’s interest in assisting its most vulnerable and defenseless citizens will be advanced. The incremental cost of providing this opportunity to Plaintiffs and other Class Members—a cost that Congress has subsidized through grants under the McKinney-Vento Act—pales in comparison.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant a preliminary injunction in their and the other Class Members' favor.

Applicant Details

First Name	Aaron
Last Name	Pultman
Citizenship Status	U. S. Citizen
Email Address	aaron.pultman@law.nyu.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>310 West 95th St. Apt. 6B</div> <div>City</div> <div>New York</div> <div>State/Territory</div> <div>New York</div> <div>Zip</div> <div>10025</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	201-841-4641

Applicant Education

BA/BS From	Johns Hopkins University
Date of BA/BS	May 2019
JD/LLB From	New York University School of Law
	https://www.law.nyu.edu
Date of JD/LLB	May 19, 2022
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Annual Survey of American Law
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Sack, Emily
ejs2163@nyu.edu

Adler, Amy
amy.adler@nyu.edu
(212) 998-6645

Morrison, Trevor
trevor.morrison@nyu.edu
212-998-6000

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Aaron J. Pultman

310 West 95th St., Apt. 6B | New York, NY 10025
201.841.4641 | aaron.pultman@law.nyu.edu

April 11, 2022

The Honorable Lewis J. Liman
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Dear Judge Liman,

I am a third-year law student at New York University School of Law, and I am writing to apply for a clerkship in your chambers for the 2024-25 term or any subsequent term.

My interest in clerking in your chambers stems from a desire to practice as a litigator (which I will be doing at Freshfields, Bruckhaus, and Deringer upon graduation) and eventually become an Assistant United States Attorney in New York. As both a litigator and an AUSA, the ability to engage with a multitude of issues across every topic is vital. Similarly, clerks, particularly in the Southern District, must constantly become experts in new areas of both fact and law. Clerking in your chambers would be an excellent way for me to develop this skill and observe top-notch lawyering on the most complex and novel issues.

My experience and qualifications will enable me to contribute meaningfully to your chambers. Over the past two years, I have transitioned from the position of staff editor to Senior Articles Editor for the *Annual Survey of American Law*. In both positions, I have devoted a great deal of time to crafting, refining, and reviewing legal writing. The product of all of these experiences has been the development of a professional approach to research and writing, with a particular focus on concision, clarity, and accuracy. As part of my application, you will find a paper which I wrote for my course in Domestic Violence Law titled “Beneath the Badge: Preventing and Punishing Officer Involved Domestic Violence”; which is scheduled to be published by *Annual Survey* in their online forum.

In addition to a writing sample, my application contains a resume, transcript, and letters of recommendation from: Dean Trevor Morrison, dean of NYU School of Law (212-998-6000), Professor Amy Adler, professor at NYU School of Law (212-998-6645), and Professor Emily Sack, professor at Roger Williams University School of Law (401-254-4603). Should you require additional information, please do not hesitate to let me know. Thank you for your consideration.

Respectfully,
Aaron Pultman

AARON J. PULTMAN
310 West 95th Street, Apt. 6B
New York, NY 10025
(201) 841-4641
aaron.pultman@law.nyu.edu

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

Candidate for J.D., May 2022

Honors: *Annual Survey of American Law*, Senior Articles Editor
Dean's Scholarship Recipient
Sudler Family Fellowship
Activities: Unemployment Action Center, Litigation Director
Supreme Court Forum, Staff Editor
Prosecution Legal Society, Treasurer

JOHNS HOPKINS UNIVERSITY, Baltimore, MD

B.A. in International Studies, with Honors, May 2019

Honors: Dean's List (five semesters)
Activities: Johns Hopkins Hillel, President
Alumni Student Ambassadors, Recruitment Director

EXPERIENCE

FRESHFIELDS BRUCKHAUS AND DERINGER, New York, NY

Summer Associate, Disputes Resolution, Summer 2021

Drafted motion to dismiss in securities fraud dispute, conducted legal research and reviewed documents for state antitrust actions, and worked on resentencing for incarcerated individuals under the Domestic Violence Survivors Justice Act.

UNITED STATES ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF NEW YORK, Brooklyn, NY

Legal Intern, Criminal Division, Summer 2020

Drafted brief appealing grant of a Rule 29 motion for acquittal, researched issues in venue selection for federal prosecution, and created training materials on hate crime legislation for Assistant U.S. Attorneys.

NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, Whippany, NJ

Legal Intern, Division of Criminal Justice, Summer 2018

For the Specialized Crimes Bureau and Auto Theft Task Force, participated in interviews of witnesses, drafted a sentencing memo, and prepared documents for trial of members of car theft organization.

CONGRESSMAN JOSH GOTTHEIMER (D-NJ), Washington, D.C.

Legislative Intern, Spring 2017

Conducted research on infrastructure reports, regulations on cattle sales, and grants to religious organizations. Crafted letters to constituents on topics ranging from police reform to foreign policy.

PUBLISHED WORKS

FAIRFIELD UNIVERSITY JOURNAL OF GLOBAL CITIZENSHIP, Contributor, Spring 2019

FOREIGN AFFAIRS REVIEW, Contributor, Spring 2018

INTERNATIONAL AFFAIRS FORUM, Contributor, Spring 2017

INTERESTS

Skiing, rabbit owner, long-suffering Mets fan

Name: Aaron J Pultman
 Print Date: 03/18/2022
 Student ID: N16260092
 Institution ID: 002785
 Page: 1 of 1

New York University
 Beginning of School of Law Record

Fall 2019

School of Law Juris Doctor Major: Law				
Lawyering (Year)		LAW-LW 10687	2.5	CR
Instructor: Solmaz Firoz				
Criminal Law		LAW-LW 11147	4.0	A
Instructor: Issa Kohler-Hausmann				
Procedure		LAW-LW 11650	5.0	A-
Instructor: Geoffrey P Miller				
Contracts		LAW-LW 11672	4.0	B
Instructor: Barry E Adler				
1L Reading Group		LAW-LW 12339	0.0	CR
Topic: Challenging God: Moral Reading				
Instructor: Joseph Weiler				
	AHRS		EHRS	
Current	15.5		15.5	
Cumulative	15.5		15.5	

Spring 2020

School of Law Juris Doctor Major: Law				
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Due to the COVID-19 pandemic, all spring 2020 NYU School of Law (LAW-LW.) courses were graded on a mandatory CREDIT/FAIL basis.				
--				
Constitutional Law		LAW-LW 10598	4.0	CR
Instructor: Daryl J Levinson				
Lawyering (Year)		LAW-LW 10687	2.5	CR
Instructor: Solmaz Firoz				
Legislation and the Regulatory State		LAW-LW 10925	4.0	CR
Instructor: Adam B Cox				
Torts		LAW-LW 11275	4.0	CR
Instructor: Eleanor M Fox				
1L Reading Group		LAW-LW 12339	0.0	CR
Topic: Challenging God: Moral Reading				
Instructor: Joseph Weiler				
	AHRS		EHRS	
Current	14.5		14.5	
Cumulative	30.0		30.0	

Fall 2020

School of Law Juris Doctor Major: Law				
The Law of Democracy		LAW-LW 10170	4.0	B+
Instructor: Richard H Pildes				
Evidence		LAW-LW 11607	4.0	A-
Instructor: Daniel J Capra				
Government Civil Litigation Externship - Southern District		LAW-LW 11701	3.0	A
Instructor: David Joseph Kennedy				
Seungkun Kim				
Government Civil Litigation Externship - Southern District Seminar		LAW-LW 11895	2.0	A-
Instructor: David Joseph Kennedy				
Seungkun Kim				
	AHRS		EHRS	
Current	13.0		13.0	
Cumulative	43.0		43.0	

Spring 2021

School of Law Juris Doctor Major: Law				
Survey of Securities Regulation		LAW-LW 10322	4.0	B
Instructor: Stephen J Choi				
Criminal Procedure: Fourth and Fifth Amendments		LAW-LW 10395	4.0	B+
Instructor: Andrew Weissmann				
Free Speech		LAW-LW 10668	3.0	A-
Instructor: Amy M Adler				
Regulation of Foreign Corrupt Practices		LAW-LW 12081	2.0	B+
Instructor: Kevin E Davis				
	AHRS		EHRS	
Current	13.0		13.0	
Cumulative	56.0		56.0	

Fall 2021

School of Law Juris Doctor Major: Law				
Ethical and Legal Challenges in the Modern Corporation		LAW-LW 10387	3.0	B+
Instructor: Helen S Scott				
Karen Brenner				
Professional Responsibility and the Regulation of Lawyers		LAW-LW 11479	2.0	A-
Instructor: Geoffrey P Miller				
Federal Courts and the Federal System		LAW-LW 11722	4.0	A-
Instructor: Trevor W Morrison				
Domestic Violence Law Seminar		LAW-LW 12718	2.0	A
Instructor: Emily Joan Sack				
Persuasion and the Power of Public Sentiment: Communication for Lawyers		LAW-LW 12767	2.0	A
Instructor: Rebekah Carmichael				
	AHRS		EHRS	
Current	13.0		13.0	
Cumulative	69.0		69.0	

Spring 2022

School of Law Juris Doctor Major: Law				
Annual Survey of American Law Property		LAW-LW 10727	1.0	***
		LAW-LW 11783	4.0	***
Instructor: Gregory Ablavsky				
The American Penal State Seminar		LAW-LW 12251	2.0	***
Instructor: David W Garland				
The Elements of Criminal Justice Seminar		LAW-LW 12632	2.0	***
Instructor: Preet Bharara				
Government Anti-Corruption Externship		LAW-LW 12769	3.0	***
Instructor: Rachel Salem Pauley				
Jennifer Rodgers				
Government Anti-Corruption Externship Seminar		LAW-LW 12770	2.0	***
Instructor: Rachel Salem Pauley				
Jennifer Rodgers				
	AHRS		EHRS	
Current	14.0		0.0	
Cumulative	83.0		69.0	
Staff Editor - Annual Survey of American Law 2020-2021				
Senior Articles Editor - Annual Survey of American Law 2021-2022				

End of School of Law Record

**TRANSCRIPT ADDENDUM FOR NYU SCHOOL OF LAW
JD & LLM STUDENTS**

I certify that this is a true and accurate representation of my NYU School of Law transcript.

Grading Guidelines

Grading guidelines for JD and LLM students were adopted by the faculty effective fall 2008. These guidelines represented the faculty's collective judgment that ordinarily the distribution of grades in any course will be within the limits suggested. An A + grade was also added.

Effective Fall 2020, the first-year J.D. grading curve has been amended to remove the previous requirement of a mandatory percentage of B minus grades. B minus grades are now permitted in the J.D. first year at 0-8% but are no longer required. This change in the grading curve was proposed by the SBA and then endorsed by the Executive Committee and adopted by the faculty. Grades for JD and LLM students in upper-level courses continue to be governed by a discretionary curve in which B minus grades are permitted at 4-11% (target 7-8%).

First-Year JD (Mandatory)	All other JD and LLM (Non-Mandatory)
A+: 0-2% (target = 1%) (see note 1 below)	A+: 0-2% (target = 1%) (see note 1 below)
A: 7-13% (target = 10%)	A: 7-13% (target = 10%)
A-: 16-24% (target = 20%)	A-: 16-24% (target = 20%)
Maximum for A tier = 31%	Maximum for A tier = 31%
B+: 22-30% (target = 26%)	B+: 22-30% (target = 26%)
Maximum grades above B = 57%	Maximum grades above B = 57%
B: remainder	B: remainder
B-: 0-8%*	B-: 4-11% (target = 7-8%)
C/D/F: 0-5%	C/D/F: 0-5%

The guidelines for first-year JD courses are mandatory and binding on faculty members; again noting that a mandatory percentage of B minus grades are no longer required. In addition, the guidelines with respect to the A+ grade are mandatory in all courses. In all other cases, the guidelines are only advisory.

With the exception of the A+ rules, the guidelines do not apply at all to seminar courses, defined for this purpose to mean any course in which there are fewer than 28 students.

In classes in which credit/fail grades are permitted, these percentages should be calculated only using students taking the course for a letter grade. If there are fewer than 28 students taking the course for a letter grade, the guidelines do not apply.

Important Notes

1. The cap on the A+ grade is mandatory for all courses. However, at least one A+ can be awarded in any course. These rules apply even in courses, such as seminars, where fewer than 28 students are enrolled.
2. The percentages above are based on the number of individual grades given – not a raw percentage of the total number of students in the class.
3. Normal statistical rounding rules apply for all purposes, so that percentages will be rounded up if they are above .5, and down if they are .5 or below. This means that, for example, in a typical first-year class of 89 students, 2 A+ grades could be awarded.
4. As of fall 2020, there is no mandatory percentage of B minus grades for first-year classes.

Updated: 10/4/2021

NYU School of Law does not rank students and does not maintain records of cumulative averages for its students. For the specific purpose of awarding scholastic honors, however, unofficial cumulative averages are calculated by the Office of Records and Registration. The Office is specifically precluded by faculty rule from publishing averages and no record will appear upon any transcript issued. The Office of Records and Registration may not verify the results of a student's endeavor to define his or her own cumulative average or class rank to prospective employers.

Scholastic honors for JD candidates are as follows:

<i>Pomeroy Scholar:</i>	Top ten students in the class after two semesters
<i>Butler Scholar:</i>	Top ten students in the class after four semesters
<i>Florence Allen Scholar:</i>	Top 10% of the class after four semesters
<i>Robert McKay Scholar:</i>	Top 25% of the class after four semesters

Named scholar designations are not available to JD students who transferred to NYU School of Law in their second year, or to LLM students.


Missing Grades

A transcript may be missing one or more grades for a variety of reasons, including: (1) the transcript was printed prior to a grade-submission deadline; (2) the student has made prior arrangements with the faculty member to submit work later than the end of the semester in which the course is given; and (3) late submission of a grade. Please note that an In Progress (IP) grade may denote the fact that the student is completing a long-term research project in conjunction with this class. NYU School of Law requires students to complete a Substantial Writing paper for the JD degree. Many students, under the supervision of their faculty member, spend more than one semester working on the paper. For students who have received permission to work on the paper beyond the semester in which the registration occurs, a grade of IP is noted to reflect that the paper is in progress. Employers desiring more information about a missing grade may contact the Office of Records & Registration (212-998-6040).

Class Profile

The admissions process is highly selective and seeks to enroll candidates of exceptional ability. The Committees on JD and Graduate Admissions make decisions after considering all the information in an application. There are no combination of grades and scores that assure admission or denial. For the JD Class entering in Fall 2021 (the most recent entering class), the 75th/25th percentiles for LSAT and GPA were 174/170 and 3.93/3.73.

Updated: 10/4/2021


 JOHNS HOPKINS UNIVERSITY		ZANVYL KRIEGER SCHOOL OF ARTS & SCIENCES Baltimore, MD 21218 www.jhu.edu/registrar		UNDERGRADUATE TRANSCRIPT	
Student Name Pultman, Aaron Joshua		Identifier E4DE68	Date of Birth 04/11/xxxx	JHU Degree and Date Conferred Bachelor of Arts 05/23/2019	
Year of Study Senior	Major International Studies			Date Printed 1/12/2021	
Other Major(s) xxxxx			Minor(s) Jewish Studies		

DIV	DEPT	CRSE #	COURSE TITLE	GRADE	CREDITS
Fall 2015					
AS	ECON	180.101	Elements of Macroeconomics	S	3.0
AS	GRLL	214.376	Warrior Women	S	3.0
AS	HIST	100.102	The Medieval World	S	3.0
AS	LANG	384.215	Second Year Hebrew	S	4.0
AS	POLI	190.209	Contemp Int'l Politics	S	3.0
TERM GPA				0.00	TOTAL 16.0
Spring 2016					
AS	JWSP	193.305	The Emergence of Israel	A-	3.0
AS	LANG	384.216	Second Year Modern Hebrew II	A-	4.0
AS	NEAS	130.170	Diplomacy: Ancient Middle East	A-	3.0
AS	NEAS	130.352	History of Hasidism	A-	3.0
EN	CIVE	560.141	Perspectives Evolution Structures	S	3.0
TERM GPA				3.70	TOTAL 16.0
Dean's List					
Summer 2016					
			Rutgers University		
			Intro to Econ-Micro AS.180.102		3.0
					TOTAL 3.0
Fall 2016					
AS	HIST	100.202	Conflict and Co-Existence	B	3.0
AS	LANG	384.315	Third Year Hebrew	A-	4.0
AS	MLSC	374.255	US Intelligence Community: Theory & Practice	A-	3.0
AS	POLI	190.227	U.S. Foreign Policy	A-	3.0
AS	SOCI	230.150	Issues-Intnl Development	B	3.0
TERM GPA				3.44	TOTAL 16.0
Spring 2017					
AS	HIST	100.248	Japan in the World	A	3.0
AS	LANG	384.316	Third Year Hebrew II	A-	4.0
AS	MLSC	374.556	USIC Individual Research (IRT)	A-	3.0
AS	POLI	190.220	Global Security Politics	A-	3.0
AS	POLI	190.502	Pol Science Internship	S	1.0
TERM GPA				3.77	TOTAL 14.0
Dean's List					
Fall 2017					
AS	EART	270.112	Changing Arctic Environment	B+	3.0
AS	ECON	180.289	Economics of Health	S	3.0
AS	NEAS	130.140	Hebrew Bible / Old Testament	A	3.0
AS	POLI	190.320	Politics Of East Asia	A-	3.0
AS	POLI	190.379	Nationalism and the Politics of Ide	A	3.0
TERM GPA				3.75	TOTAL 15.0
Dean's List					

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The original transcript is in electronic PDF form. A printed copy of this transcript is not an original and is not considered to be an official transcript.


 Craig A. Smith, Deputy University Registrar

 JOHNS HOPKINS UNIVERSITY		ZANVYL KRIEGER SCHOOL OF ARTS & SCIENCES Baltimore, MD 21218 www.jhu.edu/registrar		UNDERGRADUATE TRANSCRIPT	
Student Name Pultman, Aaron Joshua		Identifier E4DE68	Date of Birth 04/11/xxxx	JHU Degree and Date Conferred Bachelor of Arts 05/23/2019	
Year of Study Senior	Major International Studies			Date Printed 1/12/2021	
Other Major(s) xxxxx			Minor(s) Jewish Studies		

DIV	DEPT	CRSE #	COURSE TITLE	GRADE	CREDITS
Spring 2018					
AS	NEAS	130.373	Prophets and Prophecy in the Bible	A-	3.0
AS	POLI	190.416	Nuclear Weapons and World Politics	A-	3.0
AS	POLI	191.354	Congress and Foreign Policy	A	3.0
AS	PSYC	200.110	Intro to Cog Psychology	S	3.0
EN	CLED	661.250	Oral Presentations	A	3.0
TERM GPA				3.85	TOTAL 15.0
Dean's List					
Fall 2018					
AS	ECON	180.266	Financial Markets and Institutions	C+	3.0
AS	FILM	061.156	LCA: On Location	S	1.0
AS	HIST	100.423	Multiethnic Japan	A-	3.0
AS	POLI	190.352	Politics of Global Development	A-	3.0
AS	POLI	190.412	The Use and Misuse of Force	A-	3.0
TERM GPA				3.35	TOTAL 13.0
Spring 2019					
AS	HIST	100.375	Histories of Women and the Vote	A	3.0
AS	POLI	190.322	Future Am Democracy	S	3.0
AS	POLI	190.434	Does Israel Have a Future?	A	3.0
AS	THEA	225.218	ANGELS IN AMERICA	A	3.0
TERM GPA				4.00	TOTAL 12.0
CUMULATIVE GPA				3.67	TOTAL 87.0
CUMULATIVE CREDITS					TOTAL 120.0
Hebrew language waived through our 2nd semester level.					
Graduated with General Honors					
*****End Of Transcript*****					

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Craig A. Smith, Deputy University Registrar



EMILY J. SACK
Adjunct Professor of Law
Professor of Law, Roger Williams
University School of Law

NYU School of Law
 40 Washington Square South
 New York, NY 10012
P: 401 254 4603
 ejs2163@nyu.edu

April 12, 2022

RE: Aaron Pultman, NYU Law '22

Your Honor:

I am writing to give my highest recommendation for Aaron Pultman for a clerkship position in your chambers. I know Aaron well, and I am confident that he would make an excellent contribution to the work of the court.

I am a tenured full professor at Roger Williams University School of Law, and also serve as an adjunct professor of law at New York University School of Law. Aaron was a student in my Domestic Violence Law seminar at NYU this past fall, and in a class filled with highly intelligent students, Aaron stood out for his exceptional analytical, research, and writing skills, and his deep engagement with the material.

The seminar was small, and so I got to know the students and their work quite well. They were required to write a lengthy paper with original research and make a presentation on their topic which was designed to elicit class discussion. Aaron chose to write on a challenging topic relating to the most effective policies for handling domestic violence cases where the alleged abuser is a police officer. This is a difficult and controversial issue, and Aaron did a tremendous job in reviewing and critiquing existing policies and their implementation, as well as proposing specific protocols.

Aaron's work was superlative in a number of ways. What particularly stood out to me was his excellent close reading of existing statutory law and model policies, enabling him to make very detailed comparisons and analyses of current guidelines. Concluding that no existing model was adequate, Aaron identified specific gaps and made detailed proposals in a variety of areas. The areas he covered ranged from initial hiring of officers and screening for domestic violence history, to incident response, victim safety, and post-incident administrative and criminal decision-making. Aaron demonstrated excellent research and writing skills in this project, as well as real insight into the unique dangers posed by officer-involved domestic violence. For example, he discussed the various databases that officers can access, such as the location of domestic violence shelters, and the ways these can be employed as tools of domestic violence; he then identified how access could be restricted for officers charged with this crime. At the same time, he has a highly developed sense of the need to protect the rights of those charged with crimes, and he deftly negotiated the tension between protecting victim safety and upholding the rights of officers accused of domestic violence.

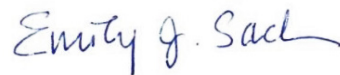
Aaron Pultman, NYU Law '22
April 12, 2022
Page 2

The topic involved covering a lot of ground that we had not discussed at all in class; Aaron and I met periodically as he researched and developed his topic, and it was exciting to see his engagement and persistence in this project, which resulted in a paper of publishable quality. In fact, I have recommended that he contact the executive agency in New Jersey responsible for drafting that state's model policy; after his close review of the policy, he offered truly excellent suggestions for improving it that I thought the agency would like to hear. He also made an excellent presentation to the class, which sparked a very engaged class discussion and demonstrated real skill in making a topic come alive to other students. Beyond this presentation, Aaron was a regular contributor to class discussion, where he consistently made thoughtful and intelligent comments. Not surprisingly, he received an A in the class, based on both his paper and his in-class performance.

I know that Aaron is an active and involved member of the law school community. Among his other accomplishments, he is a senior articles editor for NYU's Annual Survey of American Law, and litigation director of the school's Unemployment Action Center. He also serves as an officer for the Prosecution Legal Society and an editor of the Supreme Court Forum. He has experience in several legal offices, including as a summer associate at Freshfields, and as a legal intern in the U.S. Attorney's Office for the Eastern District of NY. As a former law clerk, I believe I have a good sense of the qualities that are critical to succeed in this position, and quite simply, Aaron possesses them all. In addition to his top writing, research and critical thinking skills, he has the confidence to engage with difficult legal issues, and to diligently master the many new legal areas which he is likely to encounter. He also can present legal findings and issues clearly and concisely, as is often needed in a busy judicial chambers.

Finally, Aaron is a highly mature, likeable, energetic and professional young man who is engaged with the world, and would integrate well into your chambers. I hope that you will give him your close consideration. I would be happy to provide any further information that would be helpful to you, and I can be reached at 401-254-4603 or ejs2163@nyu.edu. Thank you very much for your attention.

Sincerely,



Emily J. Sack
Adjunct Professor of Law
NYU School of Law
Professor of Law
Roger Williams University School of Law



New York University

A private university in the public service

School of Law

40 Washington Square South
New York, NY 10012-1099
cell phone: (917)-743-9995
Telephone: (212) 998-6645
Fax: (212) 995-4341
E-mail: amy.adler@nyu.edu

Amy Adler

Emily Kempin Professor of Law

April 26, 2022

Dear Judge,

I am writing to recommend Aaron Pultman for a clerkship in your chambers.

Aaron was an excellent student in my Free Speech class in the Spring of 2021. Despite the barriers that Zoom can pose to class discussion, Aaron stood out as an enthusiastic and thoughtful participant in class. He always arrived fully prepared to engage in the material and his insightful contributions often deepened the conversation. I noted that Aaron didn't shy away from challenging and subtle doctrinal questions, a skill that was particularly useful in my Free Speech class where we often analyzed unsettled issues of law and policy. A feature of my class was splitting up the students into small groups to discuss questions raised by the material before returning to a larger discussion, and it struck me that Aaron was adept at collaborating with his peers. His final exam was excellent and well written.

Aaron has excelled at NYU, earning strong grades, and distinguishing himself as a Senior Articles Editor on the Annual Survey of American Law; he will publish his Note in that journal's online forum. He has also worked with the Unemployment Action Center and as a member of the Prosecution Law Society. His ultimate career goal is to be an Assistant United States Attorney.

Aaron clearly has strong analytical skills, and he strikes me as a very hard worker who would perform well in a collaborative environment. He seems tenacious, determined, careful, affable, and collegial. I imagine would be a great addition to any chambers.

I am delighted to recommend Aaron to you and would welcome any follow-up questions you might have. My cell phone number is above.

Sincerely,

Amy Adler
Emily Kempin Professor of Law

April 12, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I write to recommend Aaron Pultman for a clerkship in your chambers. Aaron is a very strong student at NYU Law, and I am confident he will be an excellent clerk.

I got to know Aaron when he was a student in my Federal Courts class in Fall 2021. He was a valuable contributor to classroom discussions throughout the semester, reflecting both a serious engagement with the material and a genuine interest in it. Federal Courts is a complicated course, as I'm sure you know. Aaron seemed to thrive in the complexity, while also understanding the need to generate workable approaches to even the most difficult jurisprudential puzzles.

Aaron did very well on the final exam, earning a high A-. In a class full of many of the top upper-level students in our law school, this was a very strong performance indeed. I went back and re-read his exam in preparation for writing this letter, and beyond its substantive merits I was struck by the quality of the writing. Aaron's answers were clear, precise, and well organized. Considering that Aaron wrote them within the constraints of a four-hour exam, this is really quite an accomplishment. His ability to write so well, so quickly bodes very well for his prospects as a law clerk.

On campus, Aaron is an active member of the NYU Law community. He is the litigation director of the Unemployment Action Center, where students obtain practical and meaningful experience representing people seeking unemployment benefits before the Department of Labor. Aaron is also staff editor of the Supreme Court Forum, treasurer of the Prosecution Legal Society, and the senior articles editor of the Annual Survey of American Law. In all of those capacities, Aaron has proven to be an impressive student leader at NYU Law.

Aaron plans to join Freshfield Bruckhaus and Deringer as a litigation associate after graduating, but his ultimate goal is to become a federal prosecutor. He has already amassed quite a lot of relevant experience in the criminal law area, including interning in the U.S. Attorney's Office for the Eastern District of New York and in the New Jersey Office of the Attorney General. I suspect these experiences will also serve him well as a clerk in your chambers.

Aaron is smart, hardworking, and a genuinely nice person. He has my strong support, and I hope you will give him a close look. Please do not hesitate to contact me if you would like to discuss his candidacy further.

Sincerely,

Trevor Morrison

Trevor Morrison - trevor.morrison@nyu.edu - 212-998-6000

Aaron Pultman

Domestic Violence Law

Final Paper

Beneath the Badge: Preventing and Punishing Officer Involved Domestic Violence

Part I: Introduction

In the wake of the killing of George Floyd, calls came from throughout the country to ‘defund the police’.¹ In the ensuing months, people on all sides argued about the merits of drastically reducing police presence in the United States. Critics of the defund movement used a common refrain: without police who will protect women from sexual and intimate partner violence.² There is, however, a great irony to these arguments. Among all professions, police officers have the highest rate of domestic violence (DV).³ Studies have shown that approximately forty percent of officer families experience domestic violence (mostly committed by the officer).⁴ This number is significantly higher than the rate found in the general public.⁵

¹ Michael Balsamo, *When Protesters Demand ‘Defund the Police’ at George Floyd Demonstrations, What Does it Mean*, Chi. Tribune (June 7, 2020), <https://www.chicagotribune.com/nation-world/ct-nw-cb-george-floyd-protesters-defund-police-20200607-kiupi5allvgehinzidz3jund5e-story.html>.

² Wendy Murphy, *Lock Up Abusers, Don’t Defund the Police*, Bos. Herald (June 8, 2021), <https://www.bostonherald.com/2021/06/08/wendy-murphy-lock-up-abusers-dont-defund-the-police/>; Jenna Ellis, *Women Deserve Safety, Not Defunded Police*, Mo. Times (Sept. 22, 2020), <https://themissouritimes.com/opinion-women-deserve-safety-not-defunded-police/>; Cassandra Mensah, *If We Abolish Police, What Happens to Rapists*, Teen Vogue (June 24, 2020), <https://www.teenvogue.com/story/what-happens-to-rapists-if-abolish-police>.

³ Michael Gottlieb, *What Profession Has the Highest Rate of Domestic Violence*, Violent Crimes (July 20, 2016) <https://browardcriminallawyer.com/2016/07/what-profession-has-the-highest-rate-of-domestic-violence/#:~:text=So%20which%20occupation%20has%20the,harassment%20and%20stalking%20to%20homicide>.

⁴ Connor Friedersdorf, *Police Have a Much Bigger Domestic-Abuse Problem Than the NFL Does*, The Atlantic (Sept. 19, 2014), <https://www.theatlantic.com/national/archive/2014/09/police-officers-who-hit-their-wives-or-girlfriends/380329/>; <https://sites.temple.edu/klugman/2020/07/20/do-40-of-police-families-experience-domestic-violence/>.

⁵ *Id.*

Instead of being the last line of defense between women and a wave of violence, as the police tend to portray themselves, police officers are actually a major threat to the safety of women throughout the country.

This paper will analyze the problem of officer involved domestic violence (OIDV) as well as current efforts to address the issue. Part II of this paper will introduce the problem of OIDV, what makes it uniquely dangerous, and how it often goes unaddressed. Part III will detail current efforts to combat this issue and what their limitations are. Part IV presents the changes this paper recommends to current OIDV policies. Then Part V considers possible counterarguments to the proposals. Finally, Part VI summarizes the issue and the proposal.

Part II: The Problem of Officer Involved Domestic Violence

In the early hours of June 4th, 2013, Desiree Martinez ran down her street in Sanger, California, screaming and crying.⁶ She was being chased by her boyfriend Kyle Pennington who had just put a pillow over her face and used his arm to choke her.⁷ A neighbor heard Martinez's cries and called the police. When they arrived, Martinez told her story to one of the responding police officers. That officer recognized that Martinez had injuries consistent with abuse, knew that there were weapons in the home, and believed there was probable cause to arrest Pennington.⁸ Before Pennington was arrested, however, the supervisor on the scene, Sergeant Sanders, recommended that he not be arrested, and this matter just be referred to the district attorney.⁹ Sanders said that the Penningtons were "good people" and he was not going to arrest one.¹⁰ Sanders knew Pennington's father who had been a fellow officer at the Sanger Police

⁶ Sukey Lewis, *Who Do You Call for Help When Your Abuser is a Cop*, KQED (May 24, 2019), <https://www.kqed.org/news/11749447/who-do-you-call-for-help-when-your-abuser-is-a-cop>.

⁷ *Id.*

⁸ *Martinez v. City of Clovis*, 943 F.3d 1260, 1268 (9th Cir. 2019).

⁹ *Id.*

¹⁰ *Id.* at 1269.

Department and he knew that Pennington was an officer with the Clovis PD in a neighboring town. After the officers left the scene, Pennington physically attacked and sexually abused Martinez.¹¹

This was not Desiree Martinez's first interaction with the police. A month earlier she called 911 after Pennington got violent with her at a party and informed the police that he had first abused her long before then.¹² The police did not arrest Pennington on that night either, nor did they inform Martinez of any local DV resources like a shelter. Ultimately, Desiree Martinez filed a federal lawsuit against the city and its police department for completely failing to protect her, though it was eventually rejected by the 9th circuit.¹³

Martinez is just one of thousands with similar stories throughout the United States. Victims of abuse at the hands of their police officer partners face numerous obstacles to receiving justice in addition to the barriers that exist for all victims of domestic violence. Victims are often hesitant to report abuse for fear of not being believed.¹⁴ Even when the abuse is reported or the police are called, the reaction is often similar to that in the Martinez case. Finally, in the rare cases that officers are arrested, discipline almost never occurs.¹⁵ Take, for instance, the case of Vidal Contreras who was arrested for domestic abuse, battery, and false

¹¹ *Id.*

¹² *Id.* at 1267.

¹³ *Id.*

¹⁴ Kevin Fagan, *Police Domestic Violence Nearly Twice Average Rate*, SF Gate (Jan. 15, 2012), <https://www.sfgate.com/bayarea/article/Police-domestic-violence-nearly-twice-average-rate-2536928.php>.

¹⁵ Sarah Cohen, *Departments Slow to Police Their Own Abusers*, N.Y. Times (Nov. 23, 2013), <https://www.nytimes.com/projects/2013/police-domestic-abuse/index.html>; Robert Lewis, *Police Officers who Commit Domestic Violence Often Get to Keep Their Guns*, Voice of San Diego (Nov. 10, 2019), <https://www.voiceofsandiego.org/topics/public-safety/police-officers-who-commit-domestic-violence-often-get-to-keep-their-guns/>.

imprisonment after handcuffing and beating his partner.¹⁶ He ultimately pled to disturbing the peace and was able to keep his job and eventually become a human trafficking detective.¹⁷

A number of factors contribute to the inability of victims to seek help. There is a fear of reporting and an uncertainty about who you can report to. Officers often protect each other when these allegations are made. Policing typically has a culture of silence when it comes to misconduct which helps abusers evade punishment.¹⁸ Additionally, other actors in the justice system such as victim advocates and prosecutors do not want to endanger their relationship with the police by holding officers accountable for OIDV.¹⁹ These factors, combined with the extremely high rates of OIDV, create a situation where thousands are being abused by people entrusted with the enforcement of our laws who face little to no consequences for their actions.

Not only is OIDV widespread and underreported, but it presents unique dangers to victims. Police officers have access to weapons which leads to increased lethality in DV situations.²⁰ Officers are trained in surveillance and interrogation techniques which they can utilize to stalk and control their partner, as is often seen in DV situations. Police officers are also trained in combat and can use their skills to beat their partners.²¹ When victims seek help and are rebuffed by the criminal justice system, a situation is made far more dangerous as the abuser is aware that the victim is attempting to leave the abusive relationship.²² When victims do manage

¹⁶ Lewis, *supra* note 15.

¹⁷ *Id.*

¹⁸ See, e.g., Gina Barton et al, *Behind the Blue Wall of Silence*, USA TODAY (Dec. 9, 2021, 9:45 PM), <https://www.usatoday.com/in-depth/news/investigations/2021/12/09/blue-wall-police-misconduct-whistleblower-retaliation/8836387002/>.

¹⁹ *Supra* note 14 <https://www.sfgate.com/bayarea/article/Police-domestic-violence-nearly-twice-average-rate-2536928.php>

²⁰ *Supra* note 4 <https://www.theatlantic.com/national/archive/2014/09/police-officers-who-hit-their-wives-or-girlfriends/380329/>

²¹ Roge Karma, *We Train Police to be Warriors – and Then Send Them Out to be Social Workers*, Vox (Jul. 31, 2020, 7:30 AM), <https://www.vox.com/2020/7/31/21334190/what-police-do-defund-abolish-police-reform-training>.

²² *Supra* note 6 <https://www.kqed.org/news/11749447/who-do-you-call-for-help-when-your-abuser-is-a-cop>.

to leave, officers have access to resources that enable them to track their fleeing partner down. Finally, an officer's position means that they will be believed instead of their partner by fellow officers or other actors in the legal system.

Police officer domestic violence is a major problem. It is more prevalent, more dangerous, harder to detect, and less likely to be punished than domestic violence among the general public. It also negatively affects the public's faith in law enforcement and creates a situation where those whose job it is to uphold the law are major violators of it. OIDV is a serious issue in the United States which needs to be addressed.

Part III: Current Efforts to Combat Officer Involved Domestic Violence

Despite the prevalence of OIDV and the unique dangers it presents, policy and legislative initiatives to combat it are few and far between.²³ Typically, policy makers are able to ignore the issue and let law enforcement agencies police themselves with little guidance or mandates. It takes something dramatic to shock decision makers into action. One such incident was the killing of Crystal Judson Brame. In 2003, Tacoma Police Chief David Brame shot and killed his wife before killing himself in front of their two children.²⁴ Shortly beforehand, the Brames had separated and Crystal filed for divorce.²⁵ In her filings, she described a decades-long pattern of controlling behavior such as checking her car odometer and weighing her, as well as violence which included choking her and threatening her with a gun.²⁶ On numerous occasions, Crystal reported the abuse to the police.²⁷ Nothing ever came of her allegations. 911 calls were not

²³ Cohen, *supra* note 15.

²⁴ *Kids Saw Police Chief Shoot Wife, Kill Self*, ABC News (Apr. 28, 2003, 7:03 AM), <https://abcnews.go.com/GMA/story?id=125208&page=1>.

²⁵ *Id.*

²⁶ Jessica Kowal, *Washington City Shaken by Chief's Murder-Suicide*, Chi. Tribune (May 18, 2003), <https://www.chicagotribune.com/news/ct-xpm-2003-05-18-0305180504-story.html>

²⁷ *Id.*

followed up on and her reports to Tacoma's assistant Chief were not believed.²⁸ The day before the shooting, a local newspaper published the allegations against Chief Brame, yet no actions were taken.²⁹ In that article, the city manager who appointed Brame was asked for comment and responded that he had no interest in "exploring David's personal life."³⁰

The killing of Crystal Judson Brame was a wake-up call to many. The Tacoma police formed a task force to evaluate its policies and eventually worked to pass a law in Washington State requiring departments to develop policies for OIDV that met certain minimum standards.³¹ Congress, in their reauthorization of the Violence Against Women Act, included the Crystal Judson Domestic Violence Protocol Program, which gave local departments funding for training and education to prevent OIDV.³² The International Association of Chiefs of Police (IACP), which had developed a model policy on OIDV, increased their efforts to push police departments around the country to adopt their policy.³³ Despite these efforts, OIDV policies are still not widespread and those that are enacted have major gaps. Of the 56 largest police departments in the country, only about a quarter of them have specific OIDV policies and only one has adopted the IACP policy in full.³⁴ Policies that have been put into effect, such as the Washington State legislation, have major deficiencies which hinder proper enforcement. Even the IACP model policy, perhaps the most recognized and influential effort to combat OIDV, falls short in a number of areas. While there has been some progress in official action on OIDV, there is still a tremendous amount that needs to be done to properly address this issue. The next three sections

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ 151 Cong. Rec. 30660 (2005); WASH. REV. CODE ANN. § 10.99.090 (2006)

³² 151 Cong. Rec. 30660 (2005).

³³ Cohen, *supra* note 15.

³⁴ *Id.*

will examine the Washington State legislation and the OIDV policies from the IACP and the state of New Jersey and discuss their benefits as well as their shortcomings.

A. Washington State Legislation

As mentioned above, in the wake of the killing of Crystal Judson Brame, the Washington State Legislature passed a law requiring every law enforcement agency in the state to create a policy addressing OIDV by 2005.³⁵ In addition to that requirement, the statute set out a number of minimum standards that agencies' policies must include. A number of these standards seem like effective ways to combat OIDV. They include screening procedures in the hiring process, mandatory reporting when officers are made aware of allegations of domestic violence against other officers, and a separate and impartial administrative investigation for officers accused of domestic abuse.³⁶ While all of those requirements sound proper, each has at least one flaw that drastically reduces its practical value. Screening out of employees with a record of DV or credible accusations is only effective when agencies are aware of these issues. If an officer moves from one department to another to escape allegations of misconduct, as is common in law enforcement, pre-hiring screening only works if departments share details about the officer's record. Additionally, mandatory reporting is a good starting point but needs to be supplemented by requirements for the preservation of those reports, penalties for not reporting, and checks to ensure that officers are not simply covering for each other. Finally, requiring an administrative investigation is positive, but with no guidelines for what that process should look like, agencies are free to craft policies which can protect officers at the expense of victims.

³⁵ WASH. REV. CODE ANN. § 10.99.090 (2006).

³⁶ WASH. REV. CODE ANN. § 10.99.090 (4) (2006).

In addition to where the statute's requirements appear to be half-measures, there are numerous areas where the statute leaves all of the decision making to the local agency. One of the most important examples is that the statute does not provide procedures for how the department is required to respond to a call about OIDV. It does not impose requirements on the dispatcher, responding officer, or supervisors when there is an allegation of DV against an officer. The initial response is perhaps the most important stage for addressing OIDV. Ensuring that the victim is safe, connected with resources, and that the allegation is properly documented are all critical goals. The Washington statute allows departments to craft their policies on this critical phase however they want. Furthermore, the statute acknowledges that agencies may want to restrict an accused officer's access to weapons or his ability to arrest during an investigation and possibly due to the outcome of the investigation.³⁷ The statute, however, gives no guidance for how agencies should address this question. Access to weapons and to other police officers can be extremely dangerous in situations of domestic violence and allowing departments to make any choice they want could endanger victims.³⁸

Washington state's statute is certainly a laudable effort. In many respects, it sets an example for other states to require departments to enact OIDV policies with certain minimum standards. Yet, it falls short in several areas. Other model policies for OIDV are more robust but do not have the force of law. Even those policies which are more effective, however, fall into some of the same traps as Washington's statute.

³⁷ WASH. REV. CODE ANN. § 10.99.090 (4)(I) (2006)

³⁸ *Domestic Violence & Firearms*, GIFFORDS LAW CENTER, <https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/> (last visited Apr. 3, 2022)

B. The IACP Model Policy

Formed in 1893, the International Association of Chiefs of Police is the largest organization of police leaders in the world.³⁹ With members in over 165 countries, the IACP is dedicated to developing policies to improve policing and advocating for changes to how policing operates around the globe.⁴⁰ During the 1990s, statistics on OIDV were published and captured the attention of much of the public and policing community. Consequently, the IACP worked to develop policies and procedures that could be used by departments throughout the country to combat this issue. Ultimately, in 1999, the IACP released its Model Policy on Domestic Violence by Police Officers.⁴¹ This policy has been extremely influential. While only one major city has adopted the IACP policy in full,⁴² it has been incorporated in part or inspired policies throughout the United States.⁴³ Therefore, it is valuable to examine the IACP policy; what it does well and where it falls short.

The IACP policy breaks down into five sections: (A) prevention and training, (B) early warning and intervention, (C) incident response and protocols, (D) victim safety and protection, and (E) post incident administrative and criminal decisions.⁴⁴

1. Prevention and Training

The IACP policy sets out a vision for zero-tolerance of incidents of OIDV.⁴⁵ The first step to preventing these incidents is educational training on issues of domestic violence. To that end, the IACP policy requires ongoing training on the dynamics of domestic violence,

³⁹ *About IACP*, IACP, <https://www.theiacp.org/about-iacp>.

⁴⁰ *Id.*

⁴¹ Domestic Violence by Police Officers: Model Policy (Int'l Ass'n of Chiefs of Police 1999).

⁴² Cohen, *supra* note 15.

⁴³ Officer Involved Domestic Violence Policy Framework: For Oregon Law Enforcement Agencies (Or. Ass'n of Chiefs of Police 2017); Brenda Russell and Nicholas Pappas, *Officer Involved Domestic Violence: A Future of Uniform Response and Transparency*, 20 Int'l J. of Police Sci. and Mgmt. 134-142 (2018).

⁴⁴ *Supra* note 41.

⁴⁵ *Id.* at IV(A)

department procedures regarding OIDV, warning signs of domestic violence by officers, victim safety, and federal domestic violence laws.⁴⁶ While all of these are important training topics, their inclusion is not novel. The more groundbreaking and important part of this section is the required collaboration and partnerships with local victim advocacy organizations.⁴⁷ This introduces a different and critical perspective to how departments handle domestic violence. The policy instructs departments to share their training curricula, protocols, and policies with the partner organizations to receive feedback and possible revisions. This will result in more well-rounded training materials and response protocols better tied to victim needs.

2. Early Warning and Intervention

The IACP model policy includes prophylactic procedures designed to prevent OIDV before it even occurs. Central to that effort are the two pillars of this section: pre-hire screening and early intervention.⁴⁸ First, the policy requires that, as a part of the hiring process, potential employees are asked about their history with domestic violence, background checks are done to find any arrests or restraining orders, and psychological evaluations are performed to see if they have any abusive tendencies.⁴⁹ If an applicant fails any of those tests, they are screened out of the process. Second, after being hired, requirements are imposed on officers and supervisors to be cognizant of possible domestic violence warning signs among their colleagues. Supervisors are required to be on the lookout for abusive behavior such as aggressiveness, domestic violence issues like stalking, and deteriorating work performance. If any of those are observed, the supervisor is required to document them and submit requests to the chief for psychological

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at IV(B)

⁴⁹ *Id.*

evaluation and possible referral to a batterer's program.⁵⁰ Other officers are penalized if they fail to report knowledge of violence involving an officer, fail to cooperate with an investigation, interfere with cases, or intimidate witnesses or victims.⁵¹ Finally, the department is required to provide information about OIDV periodically to family members and intimate partners of their officers.⁵²

This section contains a number of important provisions. First, the requirement to screen out employees with a history of domestic violence as well as any current protection orders or investigations is a key step in preventing OIDV. Second, requiring officers to report any issues they are aware of and instituting harsh penalties for interfering with investigations helps to break the culture of silence that often makes OIDV so dangerous and so difficult to root out. Third, and finally, providing information to the families of all officers prior to any incident is a smart, proactive step to take. Instead of waiting for issues to occur, this means that family members will be able to look out for warning signs as well as know who to turn to if there are instances of domestic violence. Furthermore, making this a blanket policy means that there is no possible discretion for officers to abuse in an effort to protect themselves or their colleagues. While there are positives in this section, there are also a number of gaps. A common method utilized by officers who are in administrative hot water is to move to other departments where their disciplinary past is not known.⁵³ Consequently, a pre-hire screening process needs to involve contacting any department the applicant worked for to determine whether there were any allegations or investigations involving the applicant and domestic violence. Additionally, it

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Timothy Williams, *Cast-Out Police Officers are Often Hired in Other Cities*, N.Y. Times (Sept. 10, 2016), <https://www.nytimes.com/2016/09/11/us/whereabouts-of-cast-out-police-officers-other-cities-often-hire-them.html>.

should be included in the policy that departments be forthright with other law enforcement agencies or other employers about the DV records of their former officers. This may require a change to employee confidentiality agreements, but it is necessary to stop officers from dodging discipline simply by moving. Furthermore, while the policy does require supervisors to forward reports of problematic behavior to their chief, there are no requirements or guidelines for what the chief is supposed to do. This gives far too much discretion with zero guidance and creates the gaps in responsibility that all too often lead to OIDV.

3. Incident Response Protocols

One of the most important parts of an OIDV policy is how it handles the immediate aftermath of a 911 call about an officer committing acts of domestic violence. In this area, the IACP policy is extremely effective. First, when a call is placed, the department is required to preserve/memorialize the call and assign the case high priority.⁵⁴ Next, when the patrol unit arrives, they are required to call a supervisor to report to the scene.⁵⁵ The policy then contains important provisions for what is supposed to happen on-site in this type of case. Arrests should be made if there is probable cause, dual arrest should be avoided, and, if no arrest is made, the on-site supervisor must explain that decision in a written report.⁵⁶ Furthermore, when an arrest is made, the officer is to be relieved of his service weapon and any other weapons in the home should be seized if allowable under applicable law.⁵⁷ To ensure effective implementation, the policy requires that officers ask the victim whether they want firearms removed.⁵⁸ Once the scene is secure, the supervisor then must contact the chief as well as the officer's supervisor and

⁵⁴ *Supra* note 41 at (C)(1-2).

⁵⁵ *Id.* at (3).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

if the incident involves a chief or commissioner, the state attorney and mayor must be notified as well.⁵⁹ After the incident, department follow-up is required. The chief must ensure that all responding officers are debriefed and informed of the department confidentiality guidelines.⁶⁰

In general, this is a positive section. It ensures that multiple levels of authority are involved in every stage of the response, it addresses issues with victim safety, and it encourages arrest of the perpetrator while discouraging dual arrest. In particular, the requirements to preserve the 911 call and initial communications as well as the requirement to explain the decision not to arrest anyone in writing are extremely effective. OIDV is such an issue in part because officers look the other way to help out colleagues. Requiring written, preserved records would help to combat this. Officers are less likely to take questionable actions when they are required to defend them and investigators and regulators can look back on these records to potentially discipline officers for abusing their authority. The biggest failure of this section, however, is not extending the documentation requirement even further. It would be better if the patrol officers who responded also had to prepare written reports about what transpired both before the supervisor arrived as well as after. Having multiple accounts of the events would be helpful, especially since it is likely that developments worth documenting took place before the supervisor arrived. Ideally, those reports would be written as soon as possible to prevent possible collusion or interference. Additionally, the debriefings by the chief of the responding officers should also be documented and preserved. It is important to know if the stories of any of the officers changed and have documentation of what they told their superiors. In general, creating a greater written record can only help with accountability and is an important part of combating OIDV.

⁵⁹ *Id.* at (5).

⁶⁰ *Id.* at (6).

4. Victim Safety and Protection

This section includes a few provisions designed to focus on the needs of the victim. Under the policy, departments are required to connect victims with appropriate advocacy organizations and social services.⁶¹ Officers must inform victims of the department's confidentiality policies.⁶² Officers are also supposed to be aware of possible intimidation and coercion and are obligated to help the victim plan around safety and caution victims to be aware of stalking activities.⁶³ Finally, officers are required to prepare a written report if they suspect there is intimidation or coercion.⁶⁴

This section has one major flaw: it places the victim as the receiver in this process instead of giving them the ability to direct their own safety. In domestic violence cases, the victim is often the person with the most knowledge of the risks posed by the abuser. Consequently, the victim should have more authority in creating a safety plan. It is sensible to require the police department to assist them, but it should be constructed as a partnership rather than a one-way street. Similarly, the department contact is only required to give the victim information on the confidentiality policies in play. There is a lot of other information that the department should make the victim aware of in planning safety, such as the timeline for the process, any protocols relating to the abuser's weapons or responsibilities, and the geographic area where the officer is deployed. Furthermore, the requirement to prepare a report about possible intimidation or stalking should be triggered by a report from the victim, not just the officer's suspicion. Victims are often ignored when contacting the police for help in these cases. If an officer does not want

⁶¹ *Id.* at (D)(1).

⁶² *Id.*

⁶³ *Id.* at (D)(3).

⁶⁴ *Id.* at (D)(4).

to pass a report of possible intimidation to a superior, he should have to explain his reasoning in a written report.

5. Post Incident Administrative and Criminal Decisions

The final section of the IACP policy governs the aftermath of an alleged OIDV incident. Per the policy, regardless of whether an arrest was made, the department shall launch an administrative investigation into the officer.⁶⁵ The administrative investigation can lead to serious consequences including termination for the officer as well as for any officers who had knowledge of the violence but did not report it.⁶⁶ If a determination is made that an officer committed domestic violence, they are automatically terminated.⁶⁷ During the investigation, the officer is prohibited from working on other domestic violence cases.⁶⁸ At the same time, the domestic violence unit of the department or the criminal investigations unit (if there is no DV unit) will conduct its own criminal investigation as it would in any DV case.⁶⁹ If either process results in the termination of the officer, the IACP policy provides several requirements, including: written notification of the terminated officer, direction to counseling services for the terminated officer, notification of the victim, and ensuring that the officer is not in violation of federal law banning those convicted of crimes from possessing firearms.⁷⁰

Similar to the rest of the IACP policy, this section includes several positive steps but has a few blind spots. A clear administrative process with investigations that are triggered by a report, rather than an arrest, is a step in the right direction. Furthermore, it is a wise decision that officers subject to these investigations cannot work on other DV matters. This, however, does

⁶⁵ *Id.* at (E)(1).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at (E)(2).

⁷⁰ *Id.* at (E)(3).

not go far enough. Given the issues surrounding police violence and sexual misconduct,⁷¹ officers who are being investigated for OIDV should be put on restricted duty where they do not have the ability to enforce the law against the general public. Additionally, the policy does not mention what should happen with the officer's service weapon as well as any others they may own. Having a weapon in the home greatly increases the lethality of DV⁷² and officers under investigation should have to turn in their gun during the investigation as well as any others they own (to the extent permissible by local law). Finally, officers also have access to a number of resources that can be dangerous to victims. Surveillance equipment and technology, DV shelter locations, and other policing tools can be used to track down or stalk DV victims. Officers under administrative or criminal investigation should not have access to these resources.

Since its creation, the IACP policy has been the most recognized and influential OIDV policy in the United States. Many of its developments made great strides in how police departments deal with domestic violence among its ranks. However, as discussed above, there are a number of areas where it needs improvement. In the years since its release, it has influenced departments throughout the nation. Since then, though, there has been one jurisdiction with a model policy superior to the IACP: New Jersey.

C. New Jersey's Model Policy on Domestic Violence in the Law Enforcement Community

In 2006, New Jersey's Office on the Prevention of Violence Against Women released a policy attempting to tackle the issue of domestic violence among police officers.⁷³ The policy recognizes that officers commit DV and that these actions are uniquely harmful because they

⁷¹ Philip Stinson et al., *Police Sexual Misconduct: a National Scale Study of Arrested Officers*, 30 Criminal Justice Faculty Publications (2014).

⁷² *Id.*

⁷³ Model Policy on Domestic Violence in the Law Enforcement (N.J. Dep't of Cmty. Affairs 2006).

implicate the integrity of law enforcement and affect the community's trust in the police.⁷⁴

Additionally, the policy acknowledged that victims of abuse by police officers are particularly vulnerable and face numerous barriers to receiving help.⁷⁵ Given these considerations, the New Jersey Model Policy sets out a comprehensive vision of preventing and punishing OIDV. The policy includes a number of improvements over the IACP version, including some which address concerns previously discussed in this paper. On the other hand, despite being perhaps the most robust effort to stop OIDV, the NJ policy still has gaps and areas in need of further development. This section will analyze both the advantages and deficiencies of this policy.

1. New Jersey's Model Policy Introduces Positive Developments

The New Jersey model policy follows a similar structure to the IACP's policy. It includes the same core elements: pre-hire screening, education, early-warning intervention, incident response, department follow up, and subsequent investigations. In each of these areas, the NJ policy provides additional requirements that increase the effectiveness of its policy when compared to the IACP model.

First, in the pre-hire screening, departments are required to search the Domestic Violence Central Registry to determine whether there has ever been a restraining order issued against the applicant.⁷⁶ Post hiring, DV training is mandated not just for officers but police dispatchers as well, who are typically the first line of contact with victims.⁷⁷ The NJ Policy also includes a number of positive provisions with regard to early warning signs and intervention prior to incidents of violence. Under this section, departments are required to provide non-punitive avenues of assistance to officers or their partners when requested or when problematic behavior

⁷⁴ *Id.* at (I).

⁷⁵ *Id.*

⁷⁶ *Id.* at V.

⁷⁷ *Id.* at VII.

is observed.⁷⁸ Additionally, officers have confidential options to seek help before any incidents occur. Finally, when the department knows that an officer is undergoing a separation or divorce, they must provide information regarding counseling to the officer and their partner.⁷⁹ What makes these requirements even more effective is that these referrals typically involve a psychiatrist or other mental health professional, and the chief can request assistance from a certified batterer's program.⁸⁰ These requirements will do a lot to reduce the rate of violence by intervening prior to any incident taking place.

The NJ policy also contains a number of improvements for how departments handle incidents of alleged OIDV. First, the policy requires the documentation and preservation of all calls or reports of OIDV.⁸¹ Second, as part of the response, the department is required to designate a Principal Contact Person who must be available to the victim 24/7.⁸² This person is required to keep the victim apprised of all case developments, be available for reports of harassment by the abuser or any other person, assist the victim with safety planning, and more. Third, when arriving on scene, the supervisor must ensure that the local domestic violence program is notified.⁸³ Finally, the policy includes factors to determine which party is the aggressor and should be arrested, including: the history of DV, the relative size and strength of the parties, whether injuries were sustained in self-defense, and each person's fear of further injury. These factors will reduce the likelihood that the victim is arrested, which happens all too often.⁸⁴

⁷⁸ *Id.* at VIII.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at IX.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Anne O'Dell, *Why Do Police Arrest Victims of Domestic Violence? The Need for Comprehensive Training and Investigative Protocols*, J. OF AGGRESSION, MALTREATMENT & TRAUMA 53, 60 (2007).

New Jersey's policy also has a number of extremely positive provisions that apply after an alleged incident. To start, when an act of domestic violence has been alleged, the weapons belonging to that officer are immediately seized if there is a reasonable belief that the weapons would expose the victim to risk of serious harm.⁸⁵ Before those weapons can be returned, the chief is supposed to conduct an investigation into the officer's background including a mental health exam to determine whether or not they are fit to carry weapons.⁸⁶ As discussed above, the presence of weapons increases the lethality of domestic violence so it is crucial to keep guns away from those who are dangerous.⁸⁷

The final changes made by the NJ policy are in the area of victim safety. This policy, as opposed to the IACP, empowers victims by making them partners in this process. The policy notes that safety measures should be driven by what the victim anticipates or is experiencing.⁸⁸ The victim's location is also to remain confidential, though they may choose to move to a "safe" location with a party other than the police.⁸⁹ The officers conducting the administrative and criminal investigations as well as the prosecutor are required to speak with the victim at every stage of the process and incorporate their needs and concerns if possible.⁹⁰ Finally, a domestic violence advocate must be assigned to the victim to assist them with this process.⁹¹ A major deficiency of the IACP policy was making the victim passive and not respecting their needs or opinions. The New Jersey policy corrects this and makes the victim an active participant in the process.

⁸⁵ *Id.* at X.

⁸⁶ *Id.*

⁸⁷ Stinson, *supra* note 71.

⁸⁸ *Supra* note 73 at XI.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

2. Lingering Deficiencies in the New Jersey Model Policy

While the New Jersey policy builds on the IACP model in positive ways, it does not address all of the core issues. First, while the NJ policy is more specific about what training it requires for officers, the amount of training is unacceptable. The policy requires four hours of training per year.⁹² This is extremely little given how high the rate of OIDV is and sends a message that OIDV is not something that officers need to be thinking about. Police typically spend more time training in other areas such as firearms use, which comes up far less in their service.⁹³ Second, the NJ policy does address restricting officer access to weapons following a DV allegation, but it does not restrict an officer's access to numerous other resources that could prove to be dangerous to victims. There is no provision limiting access to surveillance or databases for officers who have been accused. Similarly, the policy does not meaningfully restrict the responsibilities of officers and how they interact with the public. Like the IACP, New Jersey's policy prevents accused officers from going on DV calls. It also adds a requirement that the officer not be sent on assignments in the vicinity of the victim's location.⁹⁴ While this is an improvement, it still falls short of the mark. Finally, the New Jersey model policy still does not require enough documentation and memorialization. Requiring written reports from officers at the scene, memorialization of debriefings done with officers, and more general documentation explaining why each step is taken are all necessary to effectively combat OIDV.

Part IV: Necessary Reforms for Domestic Violence Policies

Throughout this paper, a number of issues with current policies have been raised. The failures of these policies essentially fall into two categories: (1) substantive policy gaps that must

⁹² *Id.* at V.

⁹³ *Police Training Requirements*, APEX OFFICER, <https://www.apexofficer.com/police-training-requirements> (last visited Mar. 28, 2022).

⁹⁴ *Id.* at XII.

be addressed to ensure effectiveness; and (2) the lack of provisions which would encourage compliance with the policy.

A. Substantive Changes to the Policies - Restrictions for Officers Accused of Domestic Violence

The first reform suggested by this paper is increasing the restrictions placed on officers following an allegation that they committed domestic violence. As discussed previously, existing policies do not impose that many restrictions on officers accused of committing DV. Only under the NJ policy can the accused officer's weapons be seized simply based on an allegation (and that's only with an officer's belief that they pose a significant risk to the victim) and both the IACP and NJ policies limit the enforcement activities in which the officer cannot participate to domestic violence cases and, under the NJ policy, those happening in the victim's vicinity. These restrictions are woefully insufficient.

An allegation of domestic violence against an officer should result in the immediate seizure of that officer's weapons. This should extend to personally owned firearms as well (as long as it's permitted by local law). Guns present an extreme danger to victims in DV situations and there are numerous cases of abusers using guns on their victims, their children, other people, and themselves.⁹⁵ Relying on an arrest being made or an officer's determination of risk under the NJ policy is too great of a chance to take with people's lives. Additionally, police officers have access to numerous resources that make them more dangerous to victims. Surveillance equipment, databases, tracking services, and other tools that police use could all be weaponized against victims. Consequently, access to these resources needs to be restricted when an accusation of domestic violence has been leveled against an officer.

⁹⁵ Jennifer Gollan, *How the US Fails to Take Away Guns From Domestic Abusers*, The Guardian (Oct. 26, 2021), <https://www.theguardian.com/us-news/2021/oct/26/domestic-abuse-gun-violence-reveal>.

Reform that restricts the activity of these officers must also consider the wider responsibility of the department to the public. Citizens have an interest in not being policed by those who do not themselves follow the law. Therefore, officers who have been accused of abusing their partner should not be in the streets enforcing the law. Until an officer is cleared by an investigation, they should not be allowed to participate in any enforcement. Instead, restricted duty that limits interaction with the public would be appropriate until the allegations have been investigated. This restriction should not include any diminution in pay or rank but officers facing these allegations should not be interacting with the public. Police sexual misconduct and abuse of women are already extremely high;⁹⁶ this is only exacerbated when departments allow officers accused of domestic violence to operate normally.

The addition of these restrictions on officers accused of DV would go a long way in making these policies more effective. What this reform cannot control, however, is when officers or departments disregard the policies. The next two proposals seek to reduce ability of officers to violate these policies with impunity.

B. Measures to Increase Compliance with Existing Policies

Some OIDV policies (namely the NJ model policy) would be effective if they were followed. Part of the reason for the prevalence of OIDV is that policies are not strictly followed. Other officers often cover for their colleagues and reports from victims are not taken seriously. Furthermore, the prevalence of this issue diminishes the public's faith in law enforcement and their accountability. The next two proposed reforms seek to ensure compliance with existing OIDV policies and thereby reduce the incidence and deleterious effects of OIDV.

⁹⁶ Isidoro Rodriguez, *Predators Behind the Badge: Confronting Police Sexual Misconduct*, The Crime Report (Mar. 12, 2020), <https://thecrimereport.org/2020/03/12/predators-behind-the-badge-confronting-hidden-police-sexual-misconduct/>.

1. Increased Documentation

A major issue in combatting the issue of OIDV is the possibility that officers will ignore these policies: patrol units who do not report what they see upon arrival, officers who dismiss concerns of victims and reports of abuse, colleagues who collude and ensure that they are telling the same fabricated story. All of these issues are seen in tragic stories about OIDV.⁹⁷ A key part of any reform must be implementing measures that encourage compliance and help investigators discover malfeasance. An important part of that effort would be to require written reports and documentation throughout the life of an OIDV case.

Current policies require the preservation of 911 calls about OIDV and the IACP and NJ policies both require written reports by supervisors when an arrest is not made. Both of these requirements are extremely important and should be replicated throughout the policy. All communications with the department regarding an OIDV case, not just the 911 call, should be preserved and kept together. Reports from victims, calls with witnesses and investigators, and written communications should all be preserved. Additionally, the department's responses to these reports need to be documented as well. As do the explanations for actions taken. An investigator should be able to go back and look at the record to determine what actions should have been taken/were required to be taken and what the officers in this case actually did. Furthermore, officers should be required to document what happened at their stage of involvement. Patrol units should write a report immediately after leaving the scene where they describe what they saw and what happened. When the chief debriefs those same officers later, he should document what they told him had happened. This will allow for a comparison between

⁹⁷ *Supra* note 6 <https://www.kqed.org/news/11749447/who-do-you-call-for-help-when-your-abuser-is-a-cop>; *supra* note 26 <https://www.chicagotribune.com/news/ct-xpm-2003-05-18-0305180504-story.html>;

their accounts and prevent collusion. Additionally, the chief has almost no documenting requirements in any current policy. While chiefs are typically very busy, this issue is of such importance that they should also be required to document their involvement and why they took certain actions. Finally, in order to make these requirements effective, stiff penalties will need to be implemented for officers who violate the documentation provisions.

2. Transparency

The final reform that must be adopted is a true commitment to transparency. The documentation provisions are ineffective unless investigators, politicians, and others are given access. The prevalence of OIDV has shown that police are unable or unwilling to police themselves. Therefore, they must disclose their current efforts for evaluation by decision-makers and the public. Departments should be required to provide the number of accusations against their officers as well as the resolutions of those cases. Police departments and unions will certainly be resistant, but this is a necessary component to any meaningful reform. Transparency will allow for proper evaluation of how well departments are handling OIDV cases and where the cracks are in the system.

Another important reason for including transparency is the need for accurate data for research. Much of the numbers surrounding OIDV are outdated or cobbled together from anecdotes or news reports. A reckoning with this problem requires departments to be honest with what is really happening in their ranks.

Part V: Counterarguments

There are a number of arguments that could be made against these proposed changes. First, it could be argued that this will impede the operations of police and sow mistrust among officers. Police already feel under attack, and this would only exacerbate the problem.

Additionally, it may be difficult for the police to do their jobs when a large percentage may be placed on restricted duty. While this may be the case, those officers are unfit to be enforcing the law and if it drastically reduces the effectiveness of policing, that will only further motivate efforts to prevent and properly deal with OIDV. The comfort of the police is not the priority here. The priority is protecting victims and ensuring that the law is enforced by those who abide by it and do not abuse their position.

Second, some may say that no other employer is required to react so strongly to allegations of DV. It would be better, they could say, to allow the criminal process to dictate what happens rather than giving so much power to administrative proceedings in cases with no arrest. While it may be true that other employers do not have these obligations, it is because no other employees hold such a unique position. Police officers wield an enormous amount of power. They interact with the public constantly and have the authority to arrest as well as use force. It is imperative that we ensure the people in those positions deserve to be there.

Finally, victims' rights advocates may critique these proposals as being non-discretionary and depriving the victim of autonomy. Many of the elements in the policies as well as in these proposals are mandatory and do not give the victim the right to control how things play out. This, in turn, may actually discourage some victims from reporting. If they know their partner will be placed on restricted duty it is possible that they will stay silent. While this is a very real concern, it is outweighed by two considerations. One, officers and departments have previously exploited discretion by using it to protect their fellow officers from discipline. Including non-discretionary provisions in the policy is necessary to prevent misconduct. Second, the rights of the public are also at stake here and they do not have a voice. If an officer is accused of committing domestic violence but is allowed to maintain their duties, it could be harmful to the public and would

reduce faith in the integrity of policing. The preferences of individual victims are important, but the deleterious effect on the community must be considered. The cost of having officers on the street who have been accused of abusing their partners is too high.

Part VI: Conclusion

Officer involved domestic violence remains a major issue in policing and the discourse over police reform. It is more widespread and dangerous than other forms of DV and is less likely to be addressed properly. To deal with an issue of this magnitude, comprehensive reforms are needed. The current models for how to deal with this issue leave much to be desired. Even the NJ model policy, the most comprehensive model available, does not go far enough. The biggest issue in combating OVID is that police departments too often fail to enforce their own rules. While further expansion of these policies is necessary, it is imperative that any OVID policies include safeguards to increase compliance. Allowing the public to truly evaluate this issue and how departments are responding is a key first step in reducing the rate of domestic violence among police officers. Until that is done, the problem of OVID will continue to fester just beneath the surface of our justice system.

Applicant Details

First Name	Ranja		
Last Name	Rasul		
Citizenship Status	U. S. Citizen		
Email Address	ranja.rasul@gmail.com		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> Street 8136 Billowvista Dr. City Los Angeles State/Territory California Zip 90293 Country United States </td> </tr> </table>	Address	Street 8136 Billowvista Dr. City Los Angeles State/Territory California Zip 90293 Country United States
Address			
Street 8136 Billowvista Dr. City Los Angeles State/Territory California Zip 90293 Country United States			
Contact Phone Number	3107959031		

Applicant Education

BA/BS From	Loyola Marymount University
Date of BA/BS	May 2013
JD/LLB From	University of California at Los Angeles (UCLA) Law School http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=90503&yr=2011
Date of JD/LLB	May 15, 2017
Class Rank	Not yet ranked
Law Review/Journal	Yes
Journal(s)	Journal of International Law and Foreign Affairs
Moot Court Experience	Yes
Moot Court Name(s)	Moriarty Moot Court Competition

Bar Admission

Admission(s) **New York**

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **Yes**
Clerk

Specialized Work Experience

Recommenders

Ibanez, Luz
Luz.Ibanez@icc-cpi.int
Wang, Ona
Ona_T_Wang@nysd.uscourts.gov
212-805-0260
Achiume, Tendayi
achiume@law.ucla.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Ranja Rasul

8136 Billowvista Dr. • Los Angeles, CA 90293 • (310) 795-9031 • ranja.rasul@gmail.com

May 4, 2022

Dear Judge Liman:

I am writing to express my interest in the law clerk position beginning in August 2024. I am committed to public interest law and litigation, and while I have previously served as a magistrate judge clerk, this clerkship will be the ideal position for me to gain experience in areas of the law seen more frequently by district judges. I would therefore be very grateful for the opportunity to learn from and contribute to the work of your chambers.

Admittedly, I do not have a conventional clerk background, but I believe that enables me to bring a unique perspective to the court. Raised in a working-class family with one member who has cycled in and out of the justice system, I have developed a sense of empathy and resilience that I bring to every job I undertake. Moreover, my background demonstrates my ambition and ability to overcome challenges and obstacles by adapting, reorienting, and ultimately succeeding where others may not have. I have tirelessly sought to grow during every stage of my educational and professional career and I know this determination will be an asset in chambers.

I have also strived to immerse myself in complex litigation nationally and internationally. My associate position at a trial litigation boutique, federal court clerkships, position in the Appeals Chamber of the International Criminal Court, and internships with the U.S. Attorney's Office and the FTC have provided me with diverse and invaluable opportunities to develop my legal research and writing abilities. Researching and drafting a variety of legal memoranda, orders, motions, and briefs for federal and international cases required dedication, endurance, and creativity – qualities that will serve me well at the court. Further, the substantial amount of time I have worked in chambers has allowed me to hone my ability to manage concurrent responsibilities and a large caseload under pressure. I believe this makes me uniquely suited to serving as your law clerk.

My professional experience is further complemented by my activities at UCLA. I participated in several research and advocacy projects and became a Chief Managing Editor of the *UCLA Journal of International Law & Foreign Affairs*. Taking advantage of these opportunities helped to lay the broad foundation necessary for working in public interest and government, and demonstrates the dedication and intellectual curiosity I will bring to chambers.

I am confident that my varied legal experience, strong writing ability, and personal and academic background will allow me to make substantial contributions to the court. I hope to have the opportunity to interview with you to discuss my interests and qualifications. If there are any additional materials or information that would be helpful, please do not hesitate to contact me. Thank you for your time.

Sincerely,

Ranja Rasul

Ranja Rasul

8136 Billowvista Dr. • Los Angeles, CA 90293 • (310) 795-9031 • ranja.rasul@gmail.com

PROFESSIONAL EXPERIENCE

Larson LLP, Los Angeles, CA

Associate, September 2021 – present

- Representing clients in white-collar and complex commercial cases, investigations, and arbitration.

U.S. District Court, Southern District of New York, New York, NY

Law Clerk to the Honorable Ona T. Wang, September 2019 – February 2021

- Researched and drafted opinions, orders, and bench memoranda on the wide range of issues before the judge.
- Reviewed warrants and submissions from prosecutors, defense counsel, and pre-trial officers to assist the judge with her criminal duty responsibilities.

U.S. District Court, Northern District of California, San Francisco, CA

Law Clerk & Judicial Fellow to the Honorable Laurel Beeler, March 2019 – September 2019

- Researched and drafted orders and memoranda for various dispositive and discovery motions.
- Assisted the judge and deputy with case management.
- Observed settlement conferences and criminal proceedings and assisted the judge with trial preparation.

International Criminal Court – Appeals Chamber, The Hague, Netherlands

Visiting Professional to Judge Ibañez Carranza, July 2018 – January 2019

- Researched relevant law and evaluated evidence for appeals cases, which involved substantial statutory/treaty interpretation and comparative law analysis.
- Drafted legal memoranda, communications, and working papers related to the work of the court.

Sandcastles, Los Angeles, CA

Operations Manager, January 2017 – June 2018

- Handled all aspects of business operations for family-run business, including sales, budgeting, and logistics.

United States Attorney's Office – Criminal Division, Los Angeles, CA

Legal Extern, January 2017 – April 2017

- Conducted extensive legal research and drafted memoranda and appellate brief sections for AUSAs on criminal law and procedure, including the constitutionality of digital searches and U.S. Sentencing Guidelines.

Federal Trade Commission, Los Angeles, CA

Legal Intern, Bureau of Consumer Protection, August 2016 – December 2016

- Assisted with proceedings against a large national company for deceptive advertising practices.

Office of the Federal Register, Washington D.C

Legal Intern, Office of Legal Counsel, July 2016 – August 2016

- Conducted research and wrote memoranda on issues challenging the Office, including projects on the constitutionality of the National Interstate Popular Vote Compact to alter the electoral college system.

Directorate of Public Prosecution & Anti-Corruption Division of High Court, Kampala, Uganda

Legal Intern to both Director of Public Prosecution and the Anti-Corruption Court, May 2015 – July 2015

- Made recommendations on whether a case should proceed to trial and advised on opinions in corruption cases.
- Led plea-bargaining negotiations with detainees and assisted in plea-bargaining training.

EDUCATION

UCLA School of Law, Los Angeles, CA

Juris Doctor, May 2017

Activities: UCLA Journal of International Law and Foreign Affairs, *Chief Managing Editor*; UCLA Exchange Program – The Graduate Institute, Geneva, Switzerland; UCLA International Human Rights Law Clinic.

Loyola Marymount University, Los Angeles, CA

Bachelor of Arts, *cum laude*, Honors Philosophy, May 2013

BAR ADMISSION

New York; California.

Ranja Rasul
University of California at Los Angeles (UCLA) Law School
Cumulative GPA: 3.511

Fall 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Criminal Procedure	Richard Re	B	4	
Evidence	Ingrid Eagly	B-	4	
Public International Law	Kal Raustiala	B+	4	

Spring 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
International Intellectual Property Law	Edward K. Kwakwa	P		Int'l Exchange
International Criminal Law	Paola Gaeta	P		Int'l Exchange
International Human Rights Law	Andrew Clapham	P		Int'l Exchange
Laws of War	Andrew Clapham	P		Int'l Exchange
International Investment Law	Joost Pauwelyn	P		Int'l Exchange
International Corporate Responsibility	Zachary Douglas	P		Int'l Exchange

International exchange program. Courses were taken at The Graduate Institute (IHEID) in Geneva, Switzerland and UCLA requires this to be on a credit/no credit basis. I received maximum credit for all courses.

Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
International Commercial Arbitration	Jeffrey Dasteel	A	2	
Financial Analysis	John J. Power	B+	2	
Federal Courts	Richard Re	B+	4	
International Human Rights Clinic	E. Tendayi Achiume, Joseph Berra, Bryonn Bain	A	6	

Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
International Law Theories	Richard H. Steinberg	A	3	
Cybersecurity Law	Kristen Eichensehr	A	3	
Part-time externship	United States Attorney's Office	P	5	
Negotiation Theory	Russell Korobkin	A-	3	
Business Associations	Sung Hui Kim	P	4	

Ranja Rasul
Loyola Marymount University
Cumulative GPA: 3.59

Spring 2011

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Transcendent Self	Eric D. Perl	A-	3	Primarily Greek Philosophy
Medieval Philosophy	Mary Elizabeth Ingham	B+	3	
Ethics	Zinn	A	3	
Studies in American Cultures		A	3	

Fall 2011

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Philosophy of Science	Timothy Shanahan	A	3	
Philosophy of Law	William S.K. Cameron	A-	3	
Ancient Philosophy	Erin Stackle	B+	3	
Buddhism	Jongmae Park	B+	3	

Spring 2012

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Ethical Brain & Moral Life	Timothy Shanahan	A-	3	
Modern Philosophy II		A	3	
Environmental Philosophy	William S.K. Cameron	A-	3	
Western Traditions to 1500		B-	3	

Summer 2012

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Intro to Drawing & Printmaking		A	3	

Fall 2012

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Modern Philosophy I	Virgil Martin Nemoianu	3	B	
Palestine/Israel Conflict	Najwa al-Qattan	3	B+	
Postmodern Philosophy	Brian Treanor	3	B+	

Spring 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Senior Thesis Project & Assessment	Timothy Shanahan	A	3	Optional Honors Thesis

Graduated with honors upon completion of senior thesis project.

Ranja Rasul

8136 Billowvista Dr. • Los Angeles, CA 90293 • (310) 795-9031 • ranja.rasul@gmail.com

REFERENCES

Hon. Ona T. Wang

United States Magistrate Judge
U.S. District Court for the Southern District of New York
500 Pearl St.
New York, NY 10007
Ona_T_Wang@nysd.uscourts.gov

Hon. Laurel Beeler

United States Magistrate Judge
U.S. District Court for the Northern District of California
450 Golden Gate Ave.
San Francisco, CA 94102
Laurel_Beeler@cand.uscourts.gov

E. Tendayi Achiume

Assistant Professor of Law
UCLA School of Law
385 Charles E. Young Dr. East
Los Angeles, CA 90095
achiume@law.ucla.edu

Judge Luz del Carmen Ibáñez Carranza

Appeals Court Judge
International Criminal Court
Oude Waalsdorperweg 10
The Hague, Netherlands 2597 AK
+31 0705156067
Luz.Ibanez@icc-cpi.int

Justice Mike Chibita

Supreme Court Judge/Former Director of Public Prosecutions
Courts of Judicature
High Court Building
Plot 2, The Square
Kampala, Uganda P.O. Box 7085
+256 (0) 414-344 116
mikechibita@yahoo.com



Cour
Pénale
Internationale
International
Criminal
Court

Les Chambres
The Chambers

Judge Luz del Carmen Ibañez Carranza
Appeals Division
International Criminal Court
Oude Waalsdorperweg 10
Den Haag 2597 AK
The Netherlands

To Whom It May Concern:

I have been asked to write a recommendation for Ranja Rasul in support of his application for a clerkship and it is my pleasure to do so. I got to know Ranja well while he worked in my chambers and I have had many opportunities to observe his legal analytical written and oral skills. I am therefore confident in saying that he would be a fantastic asset and addition to any team.

Ranja's contributions to the work of the Court have been integral to my decisions as an appeals judge, and the content of his work has frequently assisted me during deliberations with my fellow judges. His thorough and insightful research and writing demonstrated a level of sophistication and an appreciation for nuance that I have learned can be quite rare. I am positive there is no legal issue, however complex, that is beyond his ability to understand and address. His expertise concerning United States domestic law, and the common law system in general, has been especially valuable given that this court is consistently engaged in deriving general principles of law from numerous common and civil law jurisdictions.

Importantly, Ranja has shown a commitment to remaining fair-minded, reasonable, and objective. This Court is tasked with handling the most grievous international crimes, and while young lawyers faced with such cases often tend to prejudge the defendants given the severity of the crimes alleged, Ranja has remained impartial and open to exploring all of the arguments presented. He thoughtfully evaluated submissions made by each party and was able to clearly articulate the strengths and weaknesses of each side, while always bearing in mind the rights of both the victims and the accused. The integrity of the judiciary is heavily dependent on maintaining this objectivity and making decisions free of bias. This is especially true for a young institution such as the International Criminal Court, which faces frequent political attack. It was clear from day one that Ranja took this mandate very seriously, and I know this quality will be appreciated in any chamber.

Beyond the high degree of competence he displayed in his work, Ranja possesses an attractive combination of personal qualities. He always arrived to the Court with a positive

Oude Waalsdorperweg 10, 2597 AK The Hague, The Netherlands
Telephone - Téléphone +31(0)70 515 85 15 / Facsimile - Télécopie +31(0)70 515 85 55

www.icc-cpi.int

attitude, great sense of humor, and an enthusiasm for engaging with the complex legal issues before the Appeals Chamber. Similarly, I have observed that he possesses a keen intellectual curiosity, always finding time to attend various lectures and trainings on international legal topics held by the Court and in The Hague. He has been very well liked by his colleagues, and has a unique ability to maintain a calm and composed demeanor even in times of immense pressure. The demands of the Chamber can be high, but he never failed to exceed my expectations. His presence will be deeply missed and if he were to decide to return to the Court in the future, we would happily welcome him back.

The competitive process to gain a position at our Court, and particularly in Chambers, results in a high number of very bright individuals being welcomed every year. Yet even within this impressive cohort, Ranja was able to stand out. I cannot recommend him highly enough, and if you would like to hear more about how strongly I believe he will make an excellent clerk and future litigator, please feel free to call me at the number provided.

Sincerely,



Judge Luz del Carmen Ibanez Carranza
Phone: +31 070 515 85 15
E-mail: Luz.Ibanez@icc-cpi.int

May 04, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I am pleased to recommend Ranja Rasul for a clerkship in your chambers. Ranja was my term law clerk for 17 months - from September 2019 through January 2021 - and I recently had the pleasure of officiating at his wedding. As you can see from the dates, Ranja started his clerkship well before the COVID-19 pandemic hit us in New York, and he continued through nearly a year of the pandemic. (I extended my 2019 and 2020 clerks' terms into 2021 to afford them more experience and to alleviate job search pressures at the height of the pandemic.) As a result, I believe he has an unusual breadth of experience.

With the exception of a few short trips, Ranja primarily worked in person, in chambers, during the pandemic. In addition to the standard work of writing opinions and managing conferences and cases, Ranja also assisted our chambers in handling many of the logistical and procedural challenges and changes during the pandemic. For example, in the early months of the pandemic, we transitioned to largely virtual proceedings for initial criminal proceedings, with a limited rotation of five magistrate judges handling criminal duty one day a week until June 2020, when we returned to our weekly rotation for virtual and hybrid criminal duty. As one of the "pandemic judges," I was one of the few judges who worked in person, at the courthouse, and Ranja was my senior law clerk who also filled in for my deputy when she could not be present in person. Throughout his clerkship term, Ranja was a steady, calm and thoughtful presence.

I would be happy to discuss Ranja's background, work and qualifications further; please do not hesitate to call me at 212-805-0260.

Very truly yours,

Ona T. Wang

U.S. Magistrate Judge, Southern District of New York

Ona Wang - Ona_T_Wang@nysd.uscourts.gov - 212-805-0260

UNIVERSITY OF CALIFORNIA, LOS ANGELES

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UCLA

SANTA BARBARA • SANTA CRUZ

E. TENDAYI ACHIUME
ASSISTANT PROFESSOR OF LAW
Phone: (310) 267-4715
E-mail: achiume@law.ucla.edu

UCLA SCHOOL OF LAW
385 Charles E. Young Drive, East
1242 Law Building
Los Angeles, California 90095-1476

May 29, 2018

Dear Judge:

I write in strong support of Ranja Rasul's application for a clerkship in your chambers. I am assistant professor of law at UCLA School of Law where I teach in the areas of international human rights law, international criminal justice, and property law. In addition to teaching doctrinal courses I also teach an international human rights clinic, as part of which I supervise students in the legal representation of survivors of human rights violations and of non-profit organizations committed to advancing human rights.

Ranja was a student in my international human rights clinic during the Fall 2016 semester. The clinic has two components. The first is a twice-a-week seminar on the theory and practice of international human rights law and advocacy, including instruction on lawyering ethics. The second is a casework requirement for which students provide legal services to institutional and individual clients wishing to pursue social justice goals using an international human rights frame. Students enroll in the clinic for six intensive credits and the casework I select is designed to challenge the students to achieve greater sophistication and integrity in public interest-oriented legal advocacy.

The project to which Ranja was assigned required him to draft a large section of a legal memorandum in which he analyzed the right to employment under international human rights law and its specific application to formerly incarcerated women. In this context, Ranja demonstrated reliable and sound legal research, reasoning and writing skills. His work was timely and well organized, and he was a valued member of the four-person project team of which he was a part. He interacted confidently and respectfully with our clients, and performed well even in the high-pressure context of the maximum-security prison facility where many of our consultations took place. Even as a law student he displayed professional maturity, and I have no doubt this maturity would serve him well in the high-stakes environment of a judicial clerkship. He earned an "A" in my clinic on account of the quality of his work, his commitment to the project and his good judgment.

Ranja combines the various attributes I have described above with a genuine commitment to public service. It was clear from the time I spent with him that his goal is a career that uses law to ensure justice especially for those most marginal in society. It is my strong hope that you will favorably consider his candidacy.

May 29, 2018
Page 2

If you have any questions at all, do not hesitate to contact me.

Best Regards,

A handwritten signature in dark ink, appearing to read "T. Achiume". The signature is fluid and cursive, with a long horizontal stroke at the end.

E. Tendayi Achiume
Assistant Professor of Law, UCLA Law School
United Nations Special Rapporteur on Racism, Racial
Discrimination, Xenophobia and Related Intolerance